

# Senate Bill 558

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Conforms Oregon law to changes in Articles 1 and 7 of Uniform Commercial Code. Amends other provisions of Oregon law to conform to changes in Uniform Commercial Code.

## A BILL FOR AN ACT

1  
2 Relating to commercial transactions governed by the Uniform Commercial Code; creating new pro-  
3 visions; amending ORS 71.1010, 71.1020, 71.1030, 71.1050, 71.1060, 71.1070, 71.1080, 71.2010,  
4 71.2020, 71.2030, 71.2040, 71.2050, 71.2060, 72.1030, 72.1040, 72.2020, 72.3100, 72.3230, 72.4010,  
5 72.5030, 72.5050, 72.5060, 72.5090, 72.6050, 72.7050, 72A.1030, 72A.5010, 72A.5140, 72A.5180,  
6 72A.5190, 72A.5260, 72A.5270, 72A.5280, 73.0103, 74.1040, 74.2100, 74A.1050, 74A.1060, 74A.2040,  
7 75.1030, 77.1020, 77.1030, 77.1040, 77.1050, 77.2010, 77.2020, 77.2030, 77.2040, 77.2050, 77.2060,  
8 77.2070, 77.2080, 77.2090, 77.2100, 77.3010, 77.3020, 77.3030, 77.3040, 77.3050, 77.3070, 77.3080,  
9 77.3090, 77.4010, 77.4020, 77.4030, 77.4040, 77.5010, 77.5020, 77.5030, 77.5040, 77.5050, 77.5060,  
10 77.5070, 77.5080, 77.5090, 77.6010, 77.6020, 77.6030, 78.1020, 78.1030, 79.0102, 79.0203, 79.0207,  
11 79.0208, 79.0301, 79.0310, 79.0312, 79.0313, 79.0314, 79.0317, 79.0338, 79.0601, 84.007, 87.142, 87.685,  
12 87.700, 586.400, 586.561, 586.720, 646A.030, 650.210, 777.770, 801.465 and 830.700; and repealing  
13 ORS 71.1090, 71.2070, 71.2080, 72.2080, 72A.2070 and 77.6040.

### Be It Enacted by the People of the State of Oregon:

14 **SECTION 1.** ORS 71.1010 is amended to read:

15 71.1010. (1) This chapter and ORS chapters 72, 72A, 73, 74, 74A, 75, 77, 78 and 79 may be cited  
16 as **the** Uniform Commercial Code.

17 (2) **This chapter may be cited as Uniform Commercial Code-General Provisions.**

18 **SECTION 2.** ORS 71.1020 is amended to read:

19 71.1020. [(1) *The Uniform Commercial Code shall be liberally construed and applied to promote its*  
20 *underlying purposes and policies.*]

21 [(2) *Underlying purposes and policies of the Uniform Commercial Code are:*]

22 [(a) *To simplify, clarify and modernize the law governing commercial transactions;*]

23 [(b) *To permit the continued expansion of commercial practices through custom, usage and agree-*  
24 *ment of the parties;*]

25 [(c) *To make uniform the law among the various jurisdictions.*]

26 [(3) *The effect of provisions of the Uniform Commercial Code may be varied by agreement, except*  
27 *as otherwise provided in the Uniform Commercial Code and except that the obligations of good faith,*  
28 *diligence, reasonableness and care prescribed by the Uniform Commercial Code may not be disclaimed*  
29 *by agreement but the parties may by agreement determine the standards by which the performance of*  
30 *such obligations is to be measured if such standards are not manifestly unreasonable.*]

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1        [(4) *The presence in certain provisions of the Uniform Commercial Code of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not*  
 2 *be varied by agreement under subsection (3) of this section.*]

4        [(5) *In the Uniform Commercial Code, unless the context otherwise requires:*]

5        [(a) *Words in the singular number include the plural, and in the plural include the singular;*]

6        [(b) *Words of the masculine gender include the feminine and the neuter, and when the sense so*  
 7 *indicates words of the neuter gender may refer to any gender.*] **This chapter applies to a transaction**  
 8 **to the extent that the transaction is governed by ORS chapter 72, 72A, 73, 74, 74A, 75, 77, 78**  
 9 **or 79.**

10        **SECTION 3.** ORS 71.1030 is amended to read:

11        71.1030. [*Unless displaced by the particular provisions of the Uniform Commercial Code, the prin-*  
 12 *ciples of law and equity, including the law merchant and the law relative to capacity to contract,*  
 13 *principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other*  
 14 *validating or invalidating cause shall supplement its provisions.*]

15        **(1) The Uniform Commercial Code must be liberally construed and applied to promote its**  
 16 **underlying purposes and policies, which are:**

17        **(a) To simply, clarify and modernize the law governing commercial transactions;**

18        **(b) To permit the continued expansion of commercial practices through custom, usage**  
 19 **and agreement of the parties; and**

20        **(c) To make uniform the law among the various jurisdictions.**

21        **(2) Unless displaced by the particular provisions of the Uniform Commercial Code, the**  
 22 **principles of law and equity, including the law merchant and the law relative to capacity to**  
 23 **contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,**  
 24 **bankruptcy and other validating or invalidating cause, supplement its provisions.**

25        **SECTION 4.** ORS 71.1050 is amended to read:

26        71.1050. [(1) *Except as provided hereafter in this section, when a transaction bears a reasonable*  
 27 *relation to this state and also to another state or nation the parties may agree that the law either of*  
 28 *this state or of such other state or nation shall govern their rights and duties. Failing such agreement*  
 29 *the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.*]

30        [(2) *Where one of the following provisions specifies the applicable law, that provision governs and*  
 31 *a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws*  
 32 *rules) so specified:*]

33        [(a) *Rights of creditors against sold goods as specified in ORS 72.4020.*]

34        [(b) *Applicability of ORS chapter 72A on leases.*]

35        [(c) *Applicability of ORS chapter 74 as specified in ORS 74.1020.*]

36        [(d) *Applicability of ORS chapter 74A as specified in ORS 74A.5070.*]

37        [(e) *Applicability of ORS chapter 75 as specified in ORS 75.1160.*]

38        [(f) *Applicability of ORS chapter 78 as specified in ORS 78.1100.*]

39        [(g) *ORS 79.0301 to 79.0307 governing perfection, the effect of perfection or nonperfection, and the*  
 40 *priority of security interests and agricultural liens.*] **If any provision or clause of the Uniform**  
 41 **Commercial Code or application to any person or circumstance is held invalid, the invalidity**  
 42 **does not affect other provisions or applications of the Uniform Commercial Code that can**  
 43 **be given effect without the invalid provision or application, and to this end the provisions**  
 44 **of the Uniform Commercial Code are severable.**

45        **SECTION 5.** ORS 71.1060 is amended to read:

1 71.1060. [(1) *The remedies provided by the Uniform Commercial Code shall be liberally adminis-*  
 2 *tered to the end that the aggrieved party may be put in as good a position as if the other party had*  
 3 *fully performed but neither consequential or special nor penal damages may be had except as specif-*  
 4 *ically provided in the Uniform Commercial Code or by other rule of law.]*

5 [(2) *Any right or obligation declared by the Uniform Commercial Code is enforceable by action*  
 6 *unless the provision declaring it specifies a different and limited effect.] **In the Uniform Commercial**  
 7 **Code, unless the statutory context otherwise requires:***

8 (1) **Words in the singular number include the plural, and those in the plural include the**  
 9 **singular; and**

10 (2) **Words of any gender also refer to any other gender.**

11 **SECTION 6.** ORS 71.1070 is amended to read:

12 71.1070. [*Any claim or right arising out of an alleged breach can be discharged in whole or in part*  
 13 *without consideration by a written waiver or renunciation signed and delivered by the aggrieved*  
 14 *party.] **The unit and section captions, though set forth in the Uniform Commercial Code, are***  
 15 **not part of the statutory law of Oregon.**

16 **SECTION 7.** ORS 71.1080 is amended to read:

17 71.1080. [*If any provision or clause of the Uniform Commercial Code or application thereof to any*  
 18 *person or circumstances is held invalid, such invalidity shall not affect other provisions or applications*  
 19 *of the Uniform Commercial Code which can be given effect without the invalid provision or application,*  
 20 *and to this end the provisions of the Uniform Commercial Code are declared to be severable.] **This***  
 21 **chapter modifies, limits and supersedes the federal Electronic Signatures in Global and Na-**  
 22 **tional Commerce Act, 15 U.S.C. 7001 et seq., except that nothing in this chapter modifies,**  
 23 **limits or supersedes section 7001(c) of that Act or authorizes electronic delivery of any of the**  
 24 **notices described in section 7003(b) of that Act.**

25 **SECTION 8.** ORS 71.2010 is amended to read:

26 71.2010. (1) **Unless the context otherwise requires, words or phrases defined in this sec-**  
 27 **tion, or in the additional definitions contained in other chapters of the Uniform Commercial**  
 28 **Code that apply to particular chapters or parts thereof, have the meanings stated.**

29 (2) Subject to [*additional*] definitions contained in other [*sections*] **chapters** of the Uniform  
 30 Commercial Code [*which are applicable to a specific series of sections, and unless the context otherwise*  
 31 *requires, in the Uniform Commercial Code:*] **that apply to particular chapters or parts thereof:**

32 [(1)] (a) “Action” in the sense of a judicial proceeding includes recoupment, counterclaim, setoff,  
 33 suit in equity and any other proceedings in which rights are determined.

34 [(2)] (b) “Aggrieved party” means a party entitled to [*resort to*] **pursue** a remedy.

35 [(3)] (c) “Agreement,” **as distinguished from “contract,”** means the bargain of the parties in  
 36 fact as found in their language or [*by implication*] **inferred** from other circumstances including  
 37 [*course of dealing or usage of trade or course of performance*] **course of performance, course of**  
 38 **dealing or usage of trade** as provided in [*ORS 71.2050 and 72.2080*] **section 16 of this 2009 Act.**  
 39 [*Whether an agreement has legal consequences is determined by the provisions of the Uniform Com-*  
 40 *mercial Code, if applicable; otherwise by the law of contracts as specified in ORS 71.1030.]*

41 [(4)] (d) “Bank” means [*any*] **a person engaged in the business of banking and includes a**  
 42 **savings bank, savings and loan association, credit union and trust company.**

43 [(5)] (e) “Bearer” means [*the*] **a person in control of a negotiable electronic document of title**  
 44 **or a person** in possession of [*an*] **a negotiable instrument, negotiable tangible document of title**  
 45 **or certificated security that is payable to bearer or indorsed in blank.**

1        [(6)] (f) “Bill of lading” means a document **of title** evidencing the receipt of goods for shipment  
 2 issued by a person engaged in the business of **directly or indirectly** transporting or forwarding  
 3 goods. **The term does not include a warehouse receipt.** [*and includes an airbill. “Airbill” means*  
 4 *a document serving for air transportation as a bill of lading does for marine or rail transportation,*  
 5 *and includes an air consignment note or air waybill.*]

6        [(7)] (g) “Branch” includes a separately incorporated foreign branch of a bank.

7        [(8)] (h) “Burden of establishing” a fact means the burden of persuading the [*triers*] **trier** of fact  
 8 that the existence of the fact is more probable than its nonexistence.

9        [(9)] (i) “Buyer in ordinary course of business” means a person that buys goods in good faith,  
 10 without knowledge that the sale violates the rights of another person in the goods, and in the or-  
 11 dinary course from a person, other than a pawnbroker, in the business of selling goods of that kind.  
 12 A person buys goods in the ordinary course if the sale to the person comports with the usual or  
 13 customary practices in the kind of business in which the seller is engaged or with the seller’s own  
 14 usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or  
 15 minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of  
 16 business may buy for cash, by exchange of other property, or on secured or unsecured credit, and  
 17 may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that  
 18 takes possession of the goods or has a right to recover the goods from the seller under ORS chapter  
 19 72 may be a buyer in ordinary course of business. **“Buyer in ordinary course of business” does**  
 20 **not include** a person that acquires goods in a transfer in bulk or as security for or in total or  
 21 partial satisfaction of a money debt. [*is not a buyer in ordinary course of business.*]

22        [(10)] (j) “Conspicuous,”[:] **with reference to a term, means** [*A term or clause is conspicuous*  
 23 *when it is*] so written, **displayed or presented** that a reasonable person against [*whom*] **which** it  
 24 is to operate ought to have noticed it. [*A printed heading in capitals (as: NONNEGOTIABLE BILL*  
 25 *OF LADING) is conspicuous. Language in the body of a form is “conspicuous” if it is in larger or*  
 26 *other contrasting type or color. But in a telegram any stated term is “conspicuous.”*] Whether a term  
 27 [*or clause*] is “conspicuous” or not is [*for*] a decision [*by*] **for** the court. **Conspicuous terms include**  
 28 **the following:**

29        (A) **A heading in capitals equal to or greater in size in than the surrounding text, or in**  
 30 **contrasting type, font or color to the surrounding text of the same or lesser size; and**

31        (B) **Language in the body of a record or display in larger type than the surrounding text,**  
 32 **or in contrasting type, font or color to the surrounding text of the same size, or set off from**  
 33 **the surrounding text of the same size by symbols or other marks that call attention to the**  
 34 **language.**

35        (k) **“Consumer” means an individual who enters into a transaction primarily for personal,**  
 36 **family or household purposes.**

37        [(11)] (L) “Contract,” **as distinguished from “agreement,”** means the total legal obligation  
 38 [*which*] **that** results from the parties’ agreement as [*affected*] **determined** by the Uniform Commer-  
 39 cial Code [*and*] **as supplemented by** any other applicable [*rules of law*] **laws.**

40        [(12)] (m) “Creditor” includes a general creditor, a secured creditor, a lien creditor and any  
 41 representative of creditors, including an assignee for the benefit of creditors, a trustee in bank-  
 42 ruptcy, a receiver in equity and an executor or administrator of an insolvent debtor’s or assignor’s  
 43 estate.

44        [(13)] (n) “Defendant” includes a person in the position of defendant in a [*cross action or*]  
 45 counterclaim, **cross claim or third party claim.**

1 [(14)] (o) “Delivery,” with respect to *[instruments]* **an electronic document of title means**  
 2 **voluntary transfer of control and with respect to an instrument,** *[documents]* **a tangible doc-**  
 3 **ument** of title, **or** chattel paper *[or certificated securities]* means voluntary transfer of possession.

4 [(15)] (p)(A) “Document of title” *[includes bill of lading, dock warrant, dock receipt, warehouse*  
 5 *receipt or order for the delivery of goods, and also any other document which]* **means a record:**

6 (i) **That** in the regular course of business or financing is treated as adequately evidencing that  
 7 the person in possession **or control** of *[it]* **the record** is entitled to receive, **control,** hold and dis-  
 8 pose of the *[document]* **record** and the goods *[it]* **the record** covers. *To be a document of title a*  
 9 *document must purport to be issued by or addressed to a bailee and purport to cover goods in the*  
 10 *bailee’s possession which are either identified or are fungible portions of an identified mass.]; and*

11 (ii) **That purports to be issued by or addressed to a bailee and to cover goods in the**  
 12 **bailee’s possession that are either identified or are fungible portions of an identified mass.**

13 (B) **The term includes a bill of lading, transport document, dock warrant, dock receipt,**  
 14 **warehouse receipt and order for delivery of goods.**

15 (C) **“Electronic document of title” means a document of title evidenced by a record con-**  
 16 **sisting of information stored in an electronic medium.**

17 (D) **“Tangible document of title” means a document of title evidenced by a record con-**  
 18 **sisting of information that is inscribed on a tangible medium.**

19 [(16)] (q) “Fault” means **default, breach or** wrongful act[,], **or** omission *[or breach].*

20 [(17) “Fungible” with respect to goods or securities means goods or securities of which any unit is,  
 21 by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall  
 22 be deemed fungible for the purposes of the Uniform Commercial Code to the extent that under a par-  
 23 ticular agreement or document unlike units are treated as equivalents.]

24 (r) **“Fungible goods” means:**

25 (A) **Goods of which any unit, by nature or usage of trade, is the equivalent of any other**  
 26 **like unit; or**

27 (B) **Goods that by agreement are treated as equivalent.**

28 [(18)] (s) “Genuine” means free of forgery or counterfeiting.

29 [(19)] (t) “Good faith,” **except as otherwise provided in ORS chapter 75,** means honesty in  
 30 fact *[in the conduct or transaction concerned.]* **and the observance of reasonable commercial**  
 31 **standards of fair dealing.**

32 [(20)] (u) “Holder” means:

33 (a) *With respect to a negotiable instrument, the person in possession of the negotiable instrument*  
 34 *if:*

35 [(A) *The instrument is payable to bearer; or]*

36 [(B) *The instrument is payable to an identified person, and the identified person is in possession.*]

37 (b) *With respect to a document of title, the person in possession of the document of title if the goods*  
 38 *are deliverable to bearer or to the order of the person in possession.]*

39 (A) **The person in possession of a negotiable instrument that is payable either to bearer**  
 40 **or to an identified person that is the person in possession;**

41 (B) **The person in possession of a negotiable tangible document of title if the goods are**  
 42 **deliverable either to bearer or to the order of the person in possession; or**

43 (C) **The person in control of a negotiable electronic document of title.**

44 [(21) *To “honor” is to pay or to accept and pay, or where a credit so engages to purchase or dis-*  
 45 *count a draft complying with the terms of the credit.*]

1 [(22)] (v) [*“Insolvency proceedings” includes any*] **“Insolvency proceeding” includes an** assign-  
 2 ment for the benefit of creditors or other [*proceedings*] **proceeding** intended to liquidate or rehabil-  
 3 itate the estate of the person involved.

4 [(23) *A person is “insolvent” who either has ceased to pay the person’s debts in the ordinary course*  
 5 *of business or cannot pay the person’s debts as they become due or is insolvent within the meaning of*  
 6 *the federal bankruptcy law.*]

7 (w) **“Insolvent” means:**

8 (A) **Having generally ceased to pay debts in the ordinary course of business other than**  
 9 **as a result of bona fide dispute;**

10 (B) **Being unable to pay debts as they become due; or**

11 (C) **Being insolvent within the meaning of federal bankruptcy law.**

12 [(24)] (x) **“Money” means a medium of exchange currently authorized or adopted by a domestic**  
 13 **or foreign government. The term [and] includes a monetary unit of account established by an**  
 14 **intergovernmental organization or by agreement between two or more [nations] countries.**

15 [(25) *A person has “notice” of fact when:*]

16 [(a) *The person has actual knowledge of it;*]

17 [(b) *The person has received a notice or notification of it; or*]

18 [(c) *From all the facts and circumstances known to the person at the time in question the person*  
 19 *has reason to know that it exists.*]

20  
 21 [A person “knows” or has “knowledge” of a fact when the person has actual knowledge of it.  
 22 “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to reason  
 23 to know. The time and circumstances under which a notice or notification may cease to be effective are  
 24 not determined by the Uniform Commercial Code.]

25 [(26) *A person “notifies” or “gives” a notice or notification to another by taking such steps as may*  
 26 *be reasonably required to inform the other in ordinary course whether or not such other actually comes*  
 27 *to know of it. A person “receives” a notice or notification when:*]

28 [(a) *It comes to the person’s attention; or*]

29 [(b) *It is duly delivered at the place of business through which the contract was made or at any*  
 30 *other place held out by the person as the place for receipt of such communications.*]

31 [(27) *Notice, knowledge or a notice or notification received by an organization is effective for a*  
 32 *particular transaction from the time when it is brought to the attention of the individual conducting*  
 33 *that transaction, and in any event from the time when it would have been brought to the individual’s*  
 34 *attention if the organization had exercised due diligence.*]

35 [(28) *“Organization” includes a corporation, government or governmental subdivision or agency,*  
 36 *business trust, estate, trust, partnership or association, two or more persons having a joint or common*  
 37 *interest, or any other legal or commercial entity.*]

38 [(29) *“Party,” as distinct from “third party,” means a person who has engaged in a transaction or*  
 39 *made an agreement within the Uniform Commercial Code.*]

40 [(30) *“Person” includes an individual or an organization.*]

41 (y) **“Organization” means a person other than an individual.**

42 (z) **“Party,” as distinguished from “third party,” means a person that has engaged in a**  
 43 **transaction or made an agreement subject to the Uniform Commercial Code.**

44 (aa) **“Person” means an individual, corporation, business trust, estate, trust, partnership,**  
 45 **limited liability company, association, joint venture, government, governmental subdivision,**

1 **agency or instrumentality, public corporation or any other legal or commercial entity.**

2 **(bb) “Present value” means the amount as of a date certain of one or more sums payable**  
 3 **in the future, discounted to the date certain by use of either an interest rate specified by the**  
 4 **parties if that rate is not manifestly unreasonable at the time the transaction is entered into**  
 5 **or, if an interest rate is not so specified, a commercially reasonable rate that takes into ac-**  
 6 **count the facts and circumstances at the time the transaction is entered into.**

7 [(31) “Presumption” or “presumed” means that the trier of fact must find the existence of the fact  
 8 presumed unless and until evidence is introduced which would support a finding of its nonexistence.]

9 [(32)] **(cc) “Purchase” [includes] means** taking by sale, **lease**, discount, negotiation, mortgage,  
 10 pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an  
 11 interest in property.

12 [(33)] **(dd) “Purchaser” means a person [who] that** takes by purchase.

13 **(ee) “Record” means information that is inscribed on a tangible medium or that is stored**  
 14 **in an electronic or other medium and is retrievable in perceivable form.**

15 [(34)] **(ff) “Remedy” means any remedial right to which an aggrieved party is entitled with or**  
 16 **without resort to a tribunal.**

17 [(35) “Representative” includes an agent, an officer of a corporation or association, and a trustee,  
 18 executor or administrator of an estate, or any other person empowered to act for another.]

19 [(36) “Rights” includes remedies.]

20 **(gg) “Representative” means a person empowered to act for another, including an agent,**  
 21 **an officer of a corporation or association and a trustee, executor, or administrator of an**  
 22 **estate.**

23 **(hh) “Right” includes remedy.**

24 [(37)(a)] **(ii)(A) “Security interest” means an interest in personal property or fixtures which se-**  
 25 **cures payment or performance of an obligation. [The term also] “Security interest” includes any**  
 26 **interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory**  
 27 **note in a transaction that is subject to ORS chapter 79.**

28 **(B) “Security interest” does not include** the special property interest of a buyer of goods on  
 29 identification of such goods to a contract for sale under ORS 72.4010, [is not a “security interest,”]  
 30 but a buyer may also acquire a “security interest” by complying with ORS chapter 79.

31 **(C)** Except as otherwise provided in ORS 72.5050, the right of a seller or lessor of goods under  
 32 ORS chapter 72 or 72A to retain or acquire possession of the goods is not a “security interest,” but  
 33 a seller or lessor may also acquire a “security interest” by complying with ORS chapter 79.

34 **(D)** The retention or reservation of title by a seller of goods notwithstanding shipment or de-  
 35 livery to the buyer [(ORS 72.4010)] **under ORS 72.4010** is limited in effect to a reservation of a  
 36 “security interest.”

37 **(E)** Whether a transaction **in the form of a lease creates a security interest is determined**  
 38 **pursuant to ORS 71.2030.** [creates a lease or security interest is determined by the facts of each case;  
 39 however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for  
 40 the right to possession and use of the goods is an obligation for the term of the lease not subject to  
 41 termination by the lessee and:]

42 [(A) The original term of the lease is equal to or greater than the remaining economic life of the  
 43 goods;]

44 [(B) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound  
 45 to become the owner of the goods;]

1       [(C) *The lessee has an option to renew the lease for the remaining economic life of the goods for*  
2 *no additional consideration or nominal additional consideration upon compliance with the lease*  
3 *agreement; or]*

4       [(D) *The lessee has an option to become the owner of the goods for no additional consideration or*  
5 *nominal additional consideration upon compliance with the lease agreement.*]

6       [(b) *A transaction does not create a security interest merely because it provides that:*]

7       [(A) *The present value of the consideration the lessee is obligated to pay the lessor for the right to*  
8 *possession and use of the goods is substantially equal to or is greater than the fair market value of the*  
9 *goods at the time the lease is entered into;*]

10       [(B) *The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, record-*  
11 *ing or registration fees, or service or maintenance costs with respect to the goods;*]

12       [(C) *The lessee has an option to renew the lease or to become the owner of the goods;*]

13       [(D) *The lessee has an option to renew the lease for a fixed rent that is equal to or greater than*  
14 *the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the*  
15 *time the option is to be performed; or]*

16       [(E) *The lessee has an option to become the owner of the goods for a fixed price that is equal to*  
17 *or greater than the reasonably predictable fair market value of the goods at the time the option is to*  
18 *be performed.*]

19       [(c) *For purposes of this subsection:*]

20       [(A) *“Additional consideration” is not nominal if, when the option to renew the lease is granted to*  
21 *the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the re-*  
22 *newal determined at the time the option is to be performed, or when the option to become the owner*  
23 *of the goods is granted to the lessee the price is stated to be the fair market value of the goods deter-*  
24 *mined at the time the option is to be performed. “Additional consideration” is nominal if it is less than*  
25 *the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not*  
26 *exercised;*]

27       [(B) *“Present value” means the amount as of a date certain of one or more sums payable in the*  
28 *future, discounted to the date certain. The discount is determined by the interest rate specified by the*  
29 *parties if the rate is not manifestly unreasonable at the time the transaction is entered into, otherwise,*  
30 *the discount is determined by a commercially reasonable rate that takes into account the facts and*  
31 *circumstances of each case at the time the transaction was entered into; and]*

32       [(C) *“Reasonably predictable” and “remaining economic life of the goods” are to be determined with*  
33 *reference to the facts and circumstances at the time the transaction is entered into.*]

34       [(38)] (jj) “Send” in connection with [any] a writing, **record** or notice means:

35       (A) To deposit in the mail or deliver for transmission by any other usual means of communi-  
36 cation with postage or cost of transmission provided for and properly addressed and in the case of  
37 an instrument to an address specified thereon or otherwise agreed, or if there be none to any ad-  
38 dress reasonable under the circumstances[. *The receipt of any writing or notice within the time at*  
39 *which it would have arrived if properly sent has the effect of a proper sending.*]; **or**

40       (B) **In any other way to cause to be received any record or notice within the time it**  
41 **would have arrived if properly sent.**

42       [(39)] (kk) “Signed” includes **using** any symbol executed or adopted [by a party] with present  
43 intention to [authenticate] **adopt or accept** a writing.

44       [(40) “Surety” includes guarantor.]

45       [(41) “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method



1 *of transmission, or the like.]*

2 **(LL) “State” means a state of the United States, the District of Columbia, Puerto Rico,**  
3 **the United States Virgin Islands or any territory or insular possession subject to the juris-**  
4 **isdiction of the United States.**

5 **(mm) “Surety” includes a guarantor or other secondary obligor.**

6 [(42)] **(nn) “Term” means [that] a portion of an agreement [which] that** relates to a particular  
7 matter.

8 **(oo) “Unauthorized signature” means a signature made without actual, implied or ap-**  
9 **parent authority. The term includes a forgery.**

10 [(43) *“Unauthorized” signature or indorsement means one made without actual, implied or apparent*  
11 *authority and includes a forgery.]*

12 [(44) *“Value.” Except as otherwise provided with respect to negotiable instruments and bank col-*  
13 *lections in ORS 74.2090 and 74.2100, a person gives “value” for rights if the person acquires them:]*

14 [(a) *In return for a binding commitment to extend credit or for the extension of immediately avail-*  
15 *able credit whether or not drawn upon and whether or not a chargeback is provided for in the event*  
16 *of difficulties in collection;]*

17 [(b) *As security for or in total or partial satisfaction of a preexisting claim;]*

18 [(c) *By accepting delivery pursuant to a preexisting contract for purchase; or]*

19 [(d) *Generally, in return for any consideration sufficient to support a simple contract.]*

20 [(45)] **(pp) “Warehouse receipt” means a [receipt] document of title** issued by a person engaged  
21 in the business of storing goods for hire.

22 [(46) *“Written” or “writing”]*

23 **(qq) “Writing” includes printing, typewriting or any other intentional reduction to tangible**  
24 **form. “Written” has a corresponding meaning.**

25 **SECTION 9.** ORS 71.2020 is amended to read:

26 71.2020. [A document in due form purporting to be a bill of lading, policy or certificate of insur-  
27 *ance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized*  
28 *or required by the contract to be issued by a third party shall be prima facie evidence of its own au-*  
29 *thenticity and genuineness and of the facts stated in the document by the third party.] (1) **Subject to***  
30 **subsection (6) of this section, a person has notice of a fact if the person:**

31 **(a) Has actual knowledge of it;**

32 **(b) Has received a notice or notification of it; or**

33 **(c) From all the facts and circumstances known to the person at the time in question,**  
34 **has reason to know that it exists.**

35 **(2) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.**

36 **(3) “Discover,” “learn” or words of similar import refer to knowledge rather than to**  
37 **reason to know.**

38 **(4) A person notifies or gives a notice or notification to another person by taking such**  
39 **steps as may be reasonably required to inform the other person in ordinary course, whether**  
40 **or not the other person actually comes to know of it.**

41 **(5) Subject to subsection (6) of this section, a person receives a notice or notification**  
42 **when:**

43 **(a) It comes to the person’s attention; or**

44 **(b) It is duly delivered in a form reasonable under the circumstances at the place of**  
45 **business through which the contract was made or at another location held out by the person**

1 as the place for receipt of such communications.

2 (6) Notice, knowledge or a notice or notification received by an organization is effective  
 3 for a particular transaction from the time it is brought to the attention of the individual  
 4 conducting that transaction and, in any event, from the time it would have been brought to  
 5 the individual's attention if the organization had exercised due diligence. An organization  
 6 exercises due diligence if it maintains reasonable routines for communicating significant in-  
 7 formation to the person conducting the transaction and there is reasonable compliance with  
 8 the routines. Due diligence does not require an individual acting for the organization to  
 9 communicate information unless the communication is part of the individual's regular duties  
 10 or the individual has reason to know of the transaction and that the transaction would be  
 11 materially affected by the information.

12 **SECTION 10.** ORS 71.2030 is amended to read:

13 71.2030. *[Every contract or duty within the Uniform Commercial Code imposes an obligation of*  
 14 *good faith in its performance or enforcement.]* (1) **Whether a transaction in the form of a lease**  
 15 **creates a lease or security interest is determined by the facts of each case.**

16 (2) **A transaction in the form of a lease creates a security interest if the consideration**  
 17 **that the lessee is to pay the lessor for the right to possession and use of the goods is an**  
 18 **obligation for the term of the lease and is not subject to termination by the lessee, and:**

19 (a) **The original term of the lease is equal to or greater than the remaining economic life**  
 20 **of the goods;**

21 (b) **The lessee is bound to renew the lease for the remaining economic life of the goods**  
 22 **or is bound to become the owner of the goods;**

23 (c) **The lessee has an option to renew the lease for the remaining economic life of the**  
 24 **goods for no additional consideration or for nominal additional consideration upon compli-**  
 25 **ance with the lease agreement; or**

26 (d) **The lessee has an option to become the owner of the goods for no additional consid-**  
 27 **eration or for nominal additional consideration upon compliance with the lease agreement.**

28 (3) **A transaction in the form of a lease does not create a security interest merely be-**  
 29 **cause:**

30 (a) **The present value of the consideration the lessee is obligated to pay the lessor for the**  
 31 **right to possession and use of the goods is substantially equal to or is greater than the fair**  
 32 **market value of the goods at the time the lease is entered into;**

33 (b) **The lessee assumes risk of loss of the goods;**

34 (c) **The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording**  
 35 **or registration fees or service or maintenance costs;**

36 (d) **The lessee has an option to renew the lease or to become the owner of the goods;**

37 (e) **The lessee has an option to renew the lease for a fixed rent that is equal to or greater**  
 38 **than the reasonably predictable fair market rent for the use of the goods for the term of the**  
 39 **renewal at the time the option is to be performed; or**

40 (f) **The lessee has an option to become the owner of the goods for a fixed price that is**  
 41 **equal to or greater than the reasonably predictable fair market value of the goods at the**  
 42 **time the option is to be performed.**

43 (4) **Additional consideration is nominal if it is less than the lessee's reasonably predict-**  
 44 **able cost of performing under the lease agreement if the option is not exercised. Additional**  
 45 **consideration is not nominal if:**

1 (a) When the option to renew the lease is granted to the lessee, the rent is stated to be  
 2 the fair market rent for the use of the goods for the term of the renewal determined at the  
 3 time the option is to be performed; or

4 (b) When the option to become the owner of the goods is granted to the lessee, the price  
 5 is stated to be the fair market value of the goods determined at the time the option is to be  
 6 performed.

7 (5) The remaining economic life of the goods and reasonably predictable fair market rent,  
 8 fair market value or cost of performing under the lease agreement must be determined with  
 9 reference to the facts and circumstances at the time the transaction is entered into.

10 **SECTION 11.** ORS 71.2040 is amended to read:

11 71.2040. [(1) Whenever the Uniform Commercial Code requires any action to be taken within a  
 12 reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.]

13 [(2) What is a reasonable time for taking any action depends on the nature, purpose and circum-  
 14 stances of such action.]

15 [(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is  
 16 agreed at or within a reasonable time.] **Except as otherwise provided in ORS chapters 73, 74 and  
 17 75, a person gives value for rights if the person acquires them:**

18 (1) **In return for a binding commitment to extend credit or for the extension of imme-  
 19 diately available credit, whether or not drawn upon and whether or not a charge-back is  
 20 provided for in the event of difficulties in collection;**

21 **(2) As security for, or in total or partial satisfaction of, a preexisting claim;**

22 **(3) By accepting delivery under a preexisting contract for purchase; or**

23 **(4) In return for any consideration sufficient to support a simple contract.**

24 **SECTION 12.** ORS 71.2050 is amended to read:

25 71.2050. [(1) A course of dealing is a sequence of previous conduct between the parties to a par-  
 26 ticular transaction which is fairly to be regarded as establishing a common basis of understanding for  
 27 interpreting their expressions and other conduct.]

28 [(2) A usage of trade is any practice or method of dealing having such regularity of observance in  
 29 a place, vocation or trade as to justify an expectation that it will be observed with respect to the  
 30 transaction in question. The existence and scope of such a usage are to be proved as facts. If it is es-  
 31 tablished that such a usage is embodied in a written trade code or similar writing the interpretation  
 32 of the writing is for the court.]

33 [(3) A course of dealing between parties and any usage of trade in the vocation or trade in which  
 34 they are engaged or of which they are or should be aware give particular meaning to and supplement  
 35 or qualify terms of an agreement.]

36 [(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall  
 37 be construed wherever reasonable as consistent with each other; but when such construction is unrea-  
 38 sonable express terms control both course of dealing and usage of trade and course of dealing controls  
 39 usage of trade.]

40 [(5) An applicable usage of trade in the place where any part of performance is to occur shall be  
 41 used in interpreting the agreement as to that part of the performance.]

42 [(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until  
 43 the party has given the other party such notice as the court finds sufficient to prevent unfair surprise  
 44 to the latter.]

45 **(1) Whether a time for taking an action required by the Uniform Commercial Code is**

1 reasonable depends on the nature, purpose and circumstances of the action.

2 (2) An action is taken seasonably if it is taken at or within the time agreed or, if no time  
3 is agreed, at or within a reasonable time.

4 **SECTION 13.** ORS 71.2060 is amended to read:

5 71.2060. [(1) Except in the cases described in subsection (2) of this section a contract for the sale  
6 of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value  
7 of remedy unless there is some writing which indicates that a contract for sale has been made between  
8 the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the  
9 party against whom enforcement is sought or by the authorized agent of the party.]

10 [(2) Subsection (1) of this section does not apply to contracts for the sale of goods nor of securities  
11 nor to security agreements.] **Whenever the Uniform Commercial Code creates a presumption  
12 with respect to a fact, or provides that a fact is presumed, the trier of fact must find the  
13 existence of the fact unless and until evidence is introduced that supports a finding of its  
14 nonexistence.**

15 **SECTION 13a.** Sections 14 to 23 of this 2009 Act are added to and made a part of the  
16 Uniform Commercial Code.

17 **SECTION 14.** (1) Except as provided hereafter in this section, when a transaction bears  
18 a reasonable relation to this state and also to another state or nation the parties may agree  
19 that the law either of this state or of such other state or nation shall govern their rights  
20 and duties. Failing such agreement, the Uniform Commercial Code applies to transactions  
21 bearing an appropriate relation to this state.

22 (2) Where one of the following provisions specifies the applicable law, that provision  
23 governs and a contrary agreement is effective only to the extent permitted by the law (in-  
24 cluding the conflict of laws rules) so specified:

25 (a) Rights of creditors against sold goods as specified in ORS 72.4020.

26 (b) Applicability of ORS chapter 72A on leases.

27 (c) Applicability of ORS chapter 74 as specified in ORS 74.1020.

28 (d) Applicability of ORS chapter 74A as specified in ORS 74A.5070.

29 (e) Applicability of ORS chapter 75 as specified in ORS 75.1160.

30 (f) Applicability of ORS chapter 78 as specified in ORS 78.1100.

31 (g) ORS 79.0301 to 79.0307 governing perfection, the effect of perfection or nonperfection  
32 and the priority of security interests and agricultural liens.

33 **SECTION 15.** (1) Except as otherwise provided in subsection (2) of this section or else-  
34 where in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial  
35 Code may be varied by agreement.

36 (2) The obligations of good faith, diligence, reasonableness and care prescribed by the  
37 Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement,  
38 may determine the standards by which the performance of those obligations is to be meas-  
39 ured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial  
40 Code requires an action to be taken within a reasonable time, a time that is not manifestly  
41 unreasonable may be fixed by agreement.

42 (3) The presence in certain provisions of the Uniform Commercial Code of the phrase  
43 “unless otherwise agreed,” or words of similar import, does not imply that the effect of other  
44 provisions may not be varied by agreement under this section.

45 **SECTION 16.** (1) A “course of performance” is a sequence of conduct between the parties

1 to a particular transaction that exists if:

2 (a) The agreement of the parties with respect to the transaction involves repeated occa-  
3 sions for performance by a party; and

4 (b) The other party, with knowledge of the nature of the performance and opportunity  
5 for objection to it, accepts the performance or acquiesces in it without objection.

6 (2) A “course of dealing” is a sequence of conduct concerning previous transactions be-  
7 tween the parties to a particular transaction that is fairly to be regarded as establishing a  
8 common basis of understanding for interpreting the parties’ expressions and other conduct.

9 (3) A “usage of trade” is any practice or method of dealing having such regularity of  
10 observance in a place, vocation, or trade as to justify an expectation that the practice or  
11 method will be observed with respect to the transaction in question. The existence and scope  
12 of the usage must be proved as fact. If it is established that the usage is embodied in a trade  
13 code or similar record, the interpretation of the record is a question of law.

14 (4) A course of performance or course of dealing between the parties or usage of trade  
15 in the vocation or trade in which the parties are engaged or of which they are or should be  
16 aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular  
17 meaning to specific terms of the agreement and may supplement or qualify the terms of the  
18 agreement. A usage of trade applicable in the place in which part of the performance under  
19 the agreement is to occur may be so utilized as to that part of the performance.

20 (5) Except as otherwise provided in subsection (6) of this section, the express terms of  
21 an agreement and any applicable course of performance, course of dealing or usage of trade  
22 must be construed whenever reasonable as consistent with each other. If such a con-  
23 struction is unreasonable:

24 (a) Express terms prevail over course of performance, course of dealing and usage of  
25 trade;

26 (b) Course of performance prevails over course of dealing and usage of trade; and

27 (c) Course of dealing prevails over usage of trade.

28 (6) Subject to ORS 72.2090, a course of performance is relevant to show a waiver or  
29 modification of any term inconsistent with the course of performance.

30 (7) Evidence of a relevant usage of trade offered by one party is not admissible unless  
31 that party has given the other party notice that the court finds sufficient to prevent unfair  
32 surprise to the other party.

33 **SECTION 17.** Every contract or duty within the Uniform Commercial Code imposes an  
34 obligation of good faith in its performance and enforcement.

35 **SECTION 18.** (1) The remedies provided by the Uniform Commercial Code must be liber-  
36 ally administered to the end that the aggrieved party may be put in as good a position as if  
37 the other party had fully performed but consequential damages, special damages or penal  
38 damages may not be had except as specifically provided in the Uniform Commercial Code or  
39 by other rule of law.

40 (2) Any right or obligation declared by the Uniform Commercial Code is enforceable by  
41 action unless the provision declaring the right or obligation specifies a different and limited  
42 effect.

43 **SECTION 19.** A claim or right arising out of an alleged breach may be discharged in  
44 whole or in part without consideration by agreement of the aggrieved party in an  
45 authenticated record.

1       **SECTION 20.** A document in due form purporting to be a bill of lading, policy or certif-  
 2       icate of insurance, official weigher's or inspector's certificate, consular invoice or any other  
 3       document authorized or required by the contract to be issued by a third party is prima facie  
 4       evidence of the document's own authenticity and genuineness and of the facts stated in the  
 5       document by the third party.

6       **SECTION 21.** (1) A party that with explicit reservation of rights performs or promises  
 7       performance or assents to performance in a manner demanded or offered by the other party  
 8       does not thereby prejudice the rights reserved. Such words as "without prejudice," "under  
 9       protest" or the like are sufficient.

10       (2) Subsection (1) of this section does not apply to an accord and satisfaction.

11       **SECTION 22.** A term providing that one party or that party's successor in interest may  
 12       accelerate payment or performance or require collateral or additional collateral "at will" or  
 13       when the party "deems itself insecure," or words of similar import, means that the party  
 14       has power to do so only if that party in good faith believes that the prospect of payment or  
 15       performance is impaired. The burden of establishing lack of good faith is on the party against  
 16       which the power has been exercised.

17       **SECTION 23.** An obligation may be issued as subordinated to performance of another  
 18       obligation of the person obligated, or a creditor may subordinate its right to performance  
 19       of an obligation by agreement with either the person obligated or another creditor of the  
 20       person obligated. Subordination does not create a security interest as against either the  
 21       common debtor or a subordinated creditor.

22       **SECTION 24.** ORS 72.1030 is amended to read:

23       72.1030. (1) In this chapter unless the context otherwise requires:

24       (a) "Buyer" means a person who buys or contracts to buy goods.

25       **[(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable**  
 26       *commercial standards of fair dealing in the trade.]*

27       **[(c) (b) "Livestock" means equines, cattle, sheep, goats, llamas, alpacas and swine.**

28       **[(d) (c) "Receipt" of goods means taking physical possession of them.**

29       **[(e) (d) "Seller" means a person who sells or contracts to sell goods.**

30       (2) Other definitions applying to this chapter, and the sections in which they appear are:

31       (a) "Acceptance," as defined in ORS 72.6060.

32       (b) "Banker's credit," as defined in ORS 72.3250.

33       (c) "Between merchants," as defined in ORS 72.1040.

34       (d) "Cancellation," as defined in ORS 72.1060 (4).

35       (e) "Commercial unit," as defined in ORS 72.1050.

36       (f) "Confirmed credit," as defined in ORS 72.3250.

37       (g) "Conforming to contract," as defined in ORS 72.1060.

38       (h) "Contract for sale," as defined in ORS 72.1060.

39       (i) "Cover," as defined in ORS 72.7120.

40       (j) "Entrusting," as defined in ORS 72.4030.

41       (k) "Financing agency," as defined in ORS 72.1040.

42       (L) "Future goods," as defined in ORS 72.1050.

43       (m) "Goods," as defined in ORS 72.1050.

44       (n) "Identification," as defined in ORS 72.5010.

45       (o) "Installment contract," as defined in ORS 72.6120.

- 1 (p) "Letter of credit," as defined in ORS 72.3250.
- 2 (q) "Lot," as defined in ORS 72.1050.
- 3 (r) "Merchant," as defined in ORS 72.1040.
- 4 (s) "Overseas," as defined in ORS 72.3230.
- 5 (t) "Person in position of seller," as defined in ORS 72.7070.
- 6 (u) "Present sale," as defined in ORS 72.1060.
- 7 (v) "Sale," as defined in ORS 72.1060.
- 8 (w) "Sale on approval," as defined in ORS 72.3260.
- 9 (x) "Sale or return," as defined in ORS 72.3260.
- 10 (y) "Termination," as defined in ORS 72.1060.

11 (3) **"Control" as provided in section 54 of this 2009 Act** and the following definitions in other  
 12 series of sections apply to this chapter:

- 13 (a) "Check," as defined in ORS 73.0104.
- 14 (b) "Consignee," as defined in ORS 77.1020.
- 15 (c) "Consignor," as defined in ORS 77.1020.
- 16 (d) "Consumer goods," as defined in ORS 79.0102.
- 17 (e) "Dishonor," as defined in ORS 73.0502.
- 18 (f) "Draft," as defined in ORS 73.0104.

19 (4) In addition, ORS chapter 71 contains general definitions and principles of construction and  
 20 interpretation applicable throughout this chapter.

21 **SECTION 25.** ORS 72.1040 is amended to read:

22 72.1040. (1) "Merchant" means a person who deals in goods of the kind or otherwise by occu-  
 23 pation purports to have knowledge or skill peculiar to the practices or goods involved in the  
 24 transaction or to whom such knowledge or skill may be attributed by employment of an agent or  
 25 broker or other intermediary who by occupation purports to have such knowledge or skill.

26 (2) "Financing agency" means a bank, finance company or other person who in the ordinary  
 27 course of business makes advances against goods or documents of title or who by arrangement with  
 28 either the seller or the buyer intervenes in ordinary course to make or collect payment due or  
 29 claimed under the contract for sale, as by purchasing or paying the seller's draft or making ad-  
 30 vances against it or by merely taking it for collection whether or not documents of title accompany  
 31 **or are associated with** the draft. "Financing agency" includes also a bank or other person who  
 32 similarly intervenes between persons who are in the position of seller and buyer in respect to the  
 33 goods.

34 (3) "Between merchants" means in any transaction with respect to which both parties are  
 35 chargeable with the knowledge or skill of merchants.

36 **SECTION 26.** ORS 72.2020 is amended to read:

37 72.2020. Terms with respect to which the confirmatory memoranda of the parties agree or which  
 38 are otherwise set forth in a writing intended by the parties as a final expression of their agreement  
 39 with respect to such terms as are included therein may not be contradicted by evidence of any prior  
 40 agreement or of a contemporaneous oral agreement but may be explained or supplemented:

41 (1) By course of **performance, course of** dealing or usage of trade as provided in **section 16**  
 42 **of this 2009 Act** [ORS 71.2050 or by course of performance as provided in ORS 72.2080]; and

43 (2) By evidence of consistent additional terms unless the court finds the writing to have been  
 44 intended also as a complete and exclusive statement of the terms of the agreement.

45 **SECTION 27.** ORS 72.3100 is amended to read:

1 72.3100. Unless otherwise agreed:

2 (1) Payment is due at the time and place at which the buyer is to receive the goods even though  
3 the place of shipment is the place of delivery; *[and]*

4 (2) If the seller is authorized to send the goods the seller may ship them under reservation, and  
5 may tender the documents of title, but, pursuant to ORS 72.5130, the buyer may inspect the goods  
6 after their arrival before payment is due unless such inspection is inconsistent with the terms of the  
7 contract; *[and]*

8 (3) If delivery is authorized and made by way of documents of title otherwise than by subsection  
9 (2) of this section then payment is due, **regardless of where the goods are to be received:**

10 (a) At the time and place at which the buyer is to receive **delivery of the tangible**  
11 **documents; or**

12 (b) **At the time the buyer is to receive delivery of the electronic documents and at the**  
13 **seller's place of business or, if none, the seller's residence; and** *[regardless of where the goods*  
14 *are to be received; and]*

15 (4) Where the seller is required or authorized to ship the goods on credit the credit period runs  
16 from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly  
17 delay the starting of the credit period.

18 **SECTION 28.** ORS 72.3230 is amended to read:

19 72.3230. (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or  
20 C. and F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading  
21 stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. and F., re-  
22 ceived for shipment.

23 (2) Where in a case within subsection (1) of this section a **tangible** bill of lading has been issued  
24 in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer  
25 may demand tender of the full set; otherwise only one part of the bill of lading need be tendered.  
26 Even if the agreement expressly requires a full set:

27 (a) Due tender of a single part is acceptable within the provisions of ORS 72.5080 (1) on cure  
28 of improper delivery; and

29 (b) Even though the full set is demanded, if the documents are sent from abroad the person  
30 tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which  
31 the buyer in good faith deems adequate.

32 (3) A shipment by water or by air or a contract contemplating such shipment is "overseas" in  
33 so far as by usage of trade or agreement it is subject to the commercial, financing or shipping  
34 practices characteristic of international deep water commerce.

35 **SECTION 29.** ORS 72.4010 is amended to read:

36 72.4010. Each provision of this chapter with regard to the rights, obligations and remedies of the  
37 seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except  
38 where the provision refers to such title. In so far as situations are not covered by the other pro-  
39 visions of this chapter and matters concerning title become material the following rules apply:

40 (1) Title to goods cannot pass under a contract for sale prior to their identification to the con-  
41 tract as provided in ORS 72.5010, and unless otherwise explicitly agreed the buyer acquires by their  
42 identification a special property as limited by the Uniform Commercial Code. Any retention or res-  
43 ervation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in  
44 effect to a reservation of a security interest. Subject to these provisions and to the provisions of  
45 ORS chapter 79 on secured transactions, title to goods passes from the seller to the buyer in any



1 manner and on any conditions explicitly agreed on by the parties.

2 (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which  
3 the seller completes performance with reference to the physical delivery of the goods, despite any  
4 reservation of a security interest and even though a document of title is to be delivered at a dif-  
5 ferent time or place; and in particular and despite any reservation of a security interest by the bill  
6 of lading:

7 (a) If the contract requires or authorizes the seller to send the goods to the buyer but does not  
8 require the seller to deliver them at destination, title passes to the buyer at the time and place of  
9 shipment; but

10 (b) If the contract requires delivery at destination, title passes on tender there.

11 (3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

12 (a) If the seller is to deliver a **tangible** document of title, title passes at the time when and the  
13 place where the seller delivers [*such documents*] **the document and if the seller is to deliver an**  
14 **electronic document of title, title passes when the seller delivers the document;** or

15 (b) If the goods are at the time of contracting already identified and no documents **of title** are  
16 to be delivered, title passes at the time and place of contracting.

17 (4) When livestock has been delivered under a contract of sale and is transported by private,  
18 common or contract carrier, if on the accompanying brand inspection certificate or memorandum  
19 of brand inspection certificate the seller has noted that as consideration for the sale of the livestock  
20 a draft, check, certificate of deposit or note has been given, title does not pass until the instrument  
21 is paid.

22 (5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not  
23 justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such re-  
24 vesting occurs by operation of law and is not a "sale."

25 **SECTION 30.** ORS 72.5030 is amended to read:

26 72.5030. (1) Tender of delivery requires that the seller put and hold conforming goods at the  
27 buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to  
28 take delivery. The manner, time and place for tender are determined by the agreement and this  
29 chapter, and in particular:

30 (a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for  
31 the period reasonably necessary to enable the buyer to take possession; but

32 (b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt  
33 of the goods.

34 (2) Where the case is within ORS 72.5040 respecting shipment tender requires that the seller  
35 comply with its provisions.

36 (3) Where the seller is required to deliver at a particular destination tender requires that the  
37 seller comply with subsection (1) of this section and also in any appropriate case tender documents  
38 as described in subsections (4) and (5) of this section.

39 (4) Where goods are in the possession of a bailee and are to be delivered without being moved:

40 (a) Tender requires that the seller either tender a negotiable document of title covering such  
41 goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

42 (b) Tender to the buyer of a nonnegotiable document of title or of a [*written direction to*] **record**  
43 **directing** the bailee to deliver is sufficient tender unless the buyer seasonably objects, and **except**  
44 **as otherwise provided in ORS chapter 79** receipt by the bailee of notification of the buyer's rights  
45 fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any

1 failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains  
 2 on the seller until the buyer has had a reasonable time to present the document or direction, and  
 3 a refusal by the bailee to honor the document or to obey the direction defeats the tender.

4 (5) Where the contract requires the seller to deliver documents:

5 (a) The seller must tender all such documents in correct form, except as provided in ORS 72.3230  
 6 (2) with respect to bills of lading in a set; and

7 (b) Tender through customary banking channels is sufficient and dishonor of a draft accompa-  
 8 nying **or associated with** the documents constitutes nonacceptance or rejection.

9 **SECTION 31.** ORS 72.5050 is amended to read:

10 72.5050. (1) Where the seller has identified goods to the contract by or before shipment:

11 (a) The procurement by the seller of a negotiable bill of lading to the order of the seller or  
 12 otherwise reserves in the seller a security interest in the goods. The procurement of the seller of  
 13 the bill to the order of a financing agency or of the buyer indicates in addition only the seller's  
 14 expectation of transferring that interest to the person named.

15 (b) A nonnegotiable bill of lading to the seller or nominee of the seller reserves possession of  
 16 the goods as security but except in a case of conditional delivery as provided in ORS 72.5070 (2) a  
 17 nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though  
 18 the seller retains possession **or control** of the bill of lading.

19 (2) When shipment by the seller with reservation of a security interest is in violation of the  
 20 contract for sale it constitutes an improper contract for transportation within ORS 72.5040 but im-  
 21 pairs neither the rights given to the buyer by shipment and identification of the goods to the con-  
 22 tract nor the seller's powers as a holder of a negotiable document **of title**.

23 **SECTION 32.** ORS 72.5060 is amended to read:

24 72.5060. (1) A financing agency by paying or purchasing for value a draft which relates to a  
 25 shipment of goods acquires to the extent of the payment or purchase and in addition to its own  
 26 rights under the draft and any document of title securing it any rights of the shipper in the goods  
 27 including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

28 (2) The right to reimbursement of a financing agency which has in good faith honored or pur-  
 29 chased the draft under commitment to or authority from the buyer is not impaired by subsequent  
 30 discovery of defects with reference to any relevant document which was apparently regular [*on its*  
 31 *face*].

32 **SECTION 33.** ORS 72.5090 is amended to read:

33 72.5090. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

34 (a) If it does not require the seller to deliver them at a particular destination, the risk of loss  
 35 passes to the buyer when the goods are duly delivered to the carrier even though the shipment is  
 36 under reservation as provided in ORS 72.5050; but

37 (b) If it does require the seller to deliver them at a particular destination and the goods are  
 38 there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when  
 39 the goods are there duly so tendered as to enable the buyer to take delivery.

40 (2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss  
 41 passes to the buyer:

42 (a) On **the buyer's** receipt [*by the buyer*] of **possession or control of** a negotiable document  
 43 of title covering the goods; [*or*]

44 (b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or

45 (c) After the buyer's receipt of **possession or control of** a nonnegotiable document of title or

1 other [*written*] direction to deliver **in a record**, as provided in ORS 72.5030 (4)(b).

2 (3) In any case not within subsection (1) or (2) of this section, the risk of loss passes to the buyer  
3 on receipt by the buyer of the goods if the seller is a merchant; otherwise the risk passes to the  
4 buyer on tender of delivery.

5 (4) The provisions of this section are subject to contrary agreement of the parties and to the  
6 provisions of ORS 72.3270 on sale on approval and ORS 72.5100 on effect of breach on risk of loss.

7 **SECTION 34.** ORS 72.6050 is amended to read:

8 72.6050. (1) The buyer's failure to state in connection with rejection a particular defect which  
9 is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect  
10 to justify rejection or to establish breach:

11 (a) Where the seller could have cured it if stated seasonably; or

12 (b) Between merchants when the seller has after rejection made a request in writing for a full  
13 and final written statement of all defects on which the buyer proposes to rely.

14 (2) Payment against documents made without reservation of rights precludes recovery of the  
15 payment for defects apparent [*on the face of*] **in** the documents.

16 **SECTION 35.** ORS 72.7050 is amended to read:

17 72.7050. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee  
18 when the seller discovers the buyer to be insolvent as provided in ORS 72.7020 and may stop de-  
19 livery of carload, truckload, planeload or larger shipments of express or freight when the buyer re-  
20 pudiates or fails to make a payment due before delivery or if for any other reason the seller has a  
21 right to withhold or reclaim the goods.

22 (2) As against such buyer the seller may stop delivery until:

23 (a) Receipt of the goods by the buyer; [*or*]

24 (b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee  
25 holds the goods for the buyer; [*or*]

26 (c) Such acknowledgment to the buyer by a carrier by reshipment or as [*warehouseman*] **a**  
27 **warehouse**; or

28 (d) Negotiation to the buyer of any negotiable document of title covering the goods.

29 (3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence  
30 to prevent delivery of the goods.

31 (b) After such notification the bailee must hold and deliver the goods according to the directions  
32 of the seller but the seller is liable to the bailee for any ensuing charges or damages.

33 (c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey  
34 a notification to stop until surrender **of possession or control** of the document.

35 (d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification  
36 to stop received from a person other than the consignor.

37 **SECTION 36.** ORS 72A.1030 is amended to read:

38 72A.1030. (1) As used in this chapter, unless the context otherwise requires:

39 (a) "Buyer in ordinary course of business" means a person who in good faith and without  
40 knowledge that the sale to the person is in violation of the ownership rights or security interest or  
41 leasehold interest of a third party in the goods buys in ordinary course from a person in the business  
42 of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by  
43 exchange of other property or on secured or unsecured credit and includes [*receiving*] **acquiring**  
44 goods or documents of title under a preexisting contract for sale but does not include a transfer in  
45 bulk or as security for or in total or partial satisfaction of a money debt.

1 (b) "Cancellation" occurs when either party puts an end to the lease contract for default by the  
2 other party.

3 (c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for  
4 purposes of lease and division of which materially impairs its character or value on the market or  
5 in use. A "commercial unit" may be a single article, as a machine, or a set of articles, as a suite  
6 of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated  
7 in use or in the relevant market as a single whole.

8 (d) "Conforming goods" or "performance under a lease contract" means goods or performance  
9 that are in accordance with the obligations under the lease contract.

10 (e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing  
11 or selling makes to a lessee who is an individual and who takes under the lease primarily for a  
12 personal, family or household purpose, if the total payments to be made under the lease contract,  
13 excluding payments for options to renew or buy, do not exceed \$25,000.

14 (f) "Fault" means wrongful act, omission, breach or default.

15 (g) "Finance lease" means a lease in which the lessor does not select, manufacture or supply the  
16 goods, the lessor acquires the goods or the right to possession and use of the goods in connection  
17 with the lease, and either:

18 (A) The lessee receives a copy of the contract evidencing the lessor's purchase of the goods on  
19 or before signing the lease contract;

20 (B) The lessee's approval of the contract evidencing the lessor's purchase of the goods is a  
21 condition to effectiveness of the lease contract;

22 (C) The lessor informs the lessee in writing of the identity of the supplier unless the lessee has  
23 selected the supplier and directed the lessor to purchase the goods from the supplier;

24 (D) The lessor informs the lessee in writing that the lessee may have rights under the contract  
25 evidencing the lessor's purchase of the goods and the lessor advises the lessee in writing to contact  
26 the supplier for a description of any such rights; or

27 (E) The lease contract discloses all warranties and other rights provided to the lessee by the  
28 lessor and supplier in connection with the lease contract and informs the lessee that there are no  
29 warranties or other rights provided to the lessee by the lessor and supplier other than those dis-  
30 closed in the lease contract.

31 (h) "Goods" means all things that are movable at the time of identification to the lease contract,  
32 or are fixtures as provided in ORS 72A.3090, but "goods" does not include money, documents, in-  
33 struments, accounts, chattel paper, general intangibles or minerals or the like, including oil and gas,  
34 before extraction. "Goods" also includes the unborn young of animals.

35 (i) "Installment lease contract" means a lease contract that authorizes or requires the delivery  
36 of goods in separate lots to be separately accepted, even though the lease contract contains a clause  
37 "each delivery is a separate lease" or its equivalent.

38 (j) "Lease" means a transfer of the right to possession and use of goods for a term in return for  
39 consideration, but a sale, including a sale on approval or a sale or return, or retention or creation  
40 of a security interest is not a lease. Unless the context clearly indicates otherwise, "lease" includes  
41 a sublease.

42 (k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee  
43 in fact as found in the language or by implication from other circumstances including course of  
44 dealing or usage of trade or course of performance as provided in this chapter. Unless the context  
45 clearly indicates otherwise, "lease agreement" includes a sublease agreement.

1 (L) "Lease contract" means the total legal obligation that results from the lease agreement as  
2 affected by this chapter and any other applicable rules of law. Unless the context clearly indicates  
3 otherwise, "lease contract" includes a sublease contract.

4 (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

5 (n) "Lessee" means a person who acquires the right to possession and use of goods under a  
6 lease. Unless the context clearly indicates otherwise, "lessee" includes a sublessee.

7 (o) "Lessee in ordinary course of business" means a person who in good faith and without  
8 knowledge that the lease to the person is in violation of the ownership rights or security interest  
9 or leasehold interest of a third party in the goods leases in ordinary course from a person in the  
10 business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may  
11 be for cash or by exchange of other property or on secured or unsecured credit and includes [*re-*  
12 *ceiving*] **acquiring** goods or documents of title under a preexisting lease contract but does not in-  
13 clude a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

14 (p) "Lessor" means a person who transfers the right to possession and use of goods under a  
15 lease. Unless the context clearly indicates otherwise, "lessor" includes a sublessor.

16 (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termi-  
17 nation or cancellation of the lease contract.

18 (r) "Lien" means a charge against or interest in goods to secure payment of a debt or perform-  
19 ance of an obligation, but "lien" does not include a security interest.

20 (s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or  
21 delivery, whether or not it is sufficient to perform the lease contract.

22 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind sub-  
23 ject to the lease.

24 (u) "Present value" means the amount as of a date certain of one or more sums payable in the  
25 future, discounted to the date certain. The discount is determined by the interest rate specified by  
26 the parties if the rate was not manifestly unreasonable at the time the transaction was entered into;  
27 otherwise, the discount is determined by a commercially reasonable rate that takes into account the  
28 facts and circumstances of each case at the time the transaction was entered into.

29 (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any  
30 other voluntary transaction creating an interest in goods.

31 (w) "Sublease" means a lease of goods the right to possession and use of which was acquired  
32 by the lessor as a lessee under an existing lease.

33 (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a  
34 finance lease.

35 (y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

36 (z) "Termination" occurs when either party pursuant to a power created by agreement or law  
37 puts an end to the lease contract otherwise than for default.

38 (2) Other definitions applying to this chapter and the sections in which they appear are:

39 (a) "Accessions" as defined in ORS 72A.3100.

40 (b) "Account" as defined in ORS 79.0102.

41 (c) "Between merchants" as defined in ORS 72.1040.

42 (d) "Buyer" as defined in ORS 72.1030.

43 (e) "Chattel paper" as defined in ORS 79.0102.

44 (f) "Construction mortgage" as defined in ORS 72A.3090.

45 (g) "Consumer goods" as defined in ORS 79.0102.

- 1 (h) “Document” as defined in ORS 79.0102.  
 2 (i) “Encumbrance” as defined in ORS 72A.3090.  
 3 (j) “Entrusting” as defined in ORS 72.4030.  
 4 (k) “Fixture filing” as defined in ORS 72A.3090.  
 5 (L) “Fixtures” as defined in ORS 72A.3090.  
 6 (m) “General intangible” as defined in ORS 79.0102.  
 7 [(n) “Good faith” as defined in ORS 72.1030.]  
 8 [(o)] (n) “Instrument” as defined in ORS 79.0102.  
 9 [(p)] (o) “Merchant” as defined in ORS 72.1040.  
 10 [(q)] (p) “Mortgage” as defined in ORS 79.0102.  
 11 [(r)] (q) “Purchase money lease” as defined in ORS 72A.3090.  
 12 [(s)] (r) “Pursuant to commitment” as defined in ORS 79.0102.  
 13 [(t)] (s) “Receipt” as defined in ORS 72.1030.  
 14 [(u)] (t) “Sale” as defined in ORS 72.1060.  
 15 [(v)] (u) “Sale on approval” as defined in ORS 72.3260.  
 16 [(w)] (v) “Sale or return” as defined in ORS 72.3260.  
 17 [(x)] (w) “Seller” as defined in ORS 72.1030.

18 (3) In addition, ORS chapter 71 contains general definitions and principles of construction and  
 19 interpretation applicable throughout this chapter.

20 **SECTION 37.** ORS 72A.5010 is amended to read:

21 72A.5010. (1) Whether the lessor or the lessee is in default under a lease contract is determined  
 22 by the lease agreement and this chapter.

23 (2) If the lessor or the lessee is in default under the lease contract, the party seeking enforce-  
 24 ment has rights and remedies as provided in this chapter and, except as limited by this chapter, as  
 25 provided in the lease agreement.

26 (3) If the lessor or the lessee is in default under the lease contract, the party seeking enforce-  
 27 ment may reduce the party’s claim to judgment, or otherwise enforce the lease contract by self-help  
 28 or any available judicial procedure or nonjudicial procedure, including administrative proceeding,  
 29 arbitration, or the like, in accordance with this chapter.

30 (4) Except as otherwise provided in [ORS 71.1060] **section 18 (1) of this 2009 Act**, this chapter  
 31 or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section  
 32 are cumulative.

33 (5) If the lease agreement covers both real property and goods, the party seeking enforcement  
 34 may proceed under ORS 72A.5010 to 72A.5310 as to the goods, or under other applicable law as to  
 35 both the real property and the goods in accordance with that party’s rights and remedies in respect  
 36 of the real property, in which case ORS 72A.5010 to 72A.5310 do not apply.

37 **SECTION 38.** ORS 72A.5140 is amended to read:

38 72A.5140. (1) In rejecting goods, a lessee’s failure to state a particular defect that is  
 39 ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify re-  
 40 jection or to establish default:

- 41 (a) If, stated seasonably, the lessor or the supplier could have cured it under ORS 72A.5130; or  
 42 (b) Between merchants if the lessor or the supplier after rejection has made a request, in writ-  
 43 ing, for a full and final written statement of all defects on which the lessee proposes to rely.

44 (2) A lessee’s failure to reserve rights when paying rent or other consideration against docu-  
 45 ments precludes recovery of the payment for defects apparent [*on the face of*] **in** the documents.

1       **SECTION 39.** ORS 72A.5180 is amended to read:

2       72A.5180. (1) After a default by a lessor under the lease contract of the type described in ORS  
3 72A.5080, or, if agreed, after other default by the lessor, the lessee may cover by making any pur-  
4 chase or lease of or contract to purchase or lease goods in substitution for those due from the les-  
5 sor.

6       (2) Except as otherwise provided in ORS 72A.5030 with respect to damages liquidated in the  
7 lease agreement or otherwise determined pursuant to agreement of the parties under ORS [71.1020  
8 and] 72A.5030 **and section 15 of this 2009 Act**, if a lessee's cover is by a lease agreement sub-  
9 stantially similar to the original lease agreement and the new lease agreement is made in good faith  
10 and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

11       (a) The present value, as of the date of the commencement of the term of the new lease agree-  
12 ment, of the rent under the new lease agreement applicable to that period of the new lease term  
13 which is comparable to the then remaining term of the original lease agreement minus the present  
14 value as of the same date of the total rent for the then remaining lease term of the original lease  
15 agreement; and

16       (b) Any incidental or consequential damages, less expenses saved in consequence of the lessor's  
17 default.

18       (3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment  
19 under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the  
20 lessor as if the lessee had elected not to cover and ORS 72A.5190 governs.

21       **SECTION 40.** ORS 72A.5190 is amended to read:

22       72A.5190. (1) Except as otherwise provided in ORS 72A.5030 with respect to damages liquidated  
23 in the lease agreement or otherwise determined pursuant to agreement of the parties under ORS  
24 [71.1020 and] 72A.5030 **and section 15 of this 2009 Act**, if a lessee elects not to cover or a lessee  
25 elects to cover and the cover is by lease agreement that for any reason does not qualify for treat-  
26 ment under ORS 72A.5180, or is by purchase or otherwise, the measure of damages for nondelivery  
27 or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present  
28 value, as of the date of the default, of the then market rent minus the present value as of the same  
29 date of the original rent, computed for the remaining lease term of the original lease agreement,  
30 together with incidental and consequential damages, less expenses saved in consequence of the les-  
31 sor's default.

32       (2) Market rent is to be determined as of the place for tender or, in cases of rejection after ar-  
33 rival or revocation of acceptance, as of the place of arrival.

34       (3) Except as otherwise agreed, if the lessee has accepted goods and given notification under  
35 ORS 72A.5160, the measure of damages for nonconforming tender or delivery or other default by a  
36 lessor is the loss resulting in the ordinary course of events from the lessor's default as determined  
37 in any manner that is reasonable together with incidental and consequential damages, less expenses  
38 saved in consequence of the lessor's default.

39       (4) Except as otherwise agreed, the measure of damages for breach of warranty is the present  
40 value at the time and place of acceptance of the difference between the value of the use of the goods  
41 accepted and the value if they had been as warranted for the lease term, unless special circum-  
42 stances show proximate damages of a different amount, together with incidental and consequential  
43 damages, less expenses saved in consequence of the lessor's default or breach of warranty.

44       **SECTION 41.** ORS 72A.5260 is amended to read:

45       72A.5260. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee

1 if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload,  
 2 planeload or larger shipments of express or freight if the lessee repudiates or fails to make a pay-  
 3 ment due before delivery, whether for rent, security or otherwise under the lease contract, or for  
 4 any other reason the lessor has a right to withhold or take possession of the goods.

5 (2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery  
 6 until:

7 (a) Receipt of the goods by the lessee;

8 (b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee  
 9 holds the goods for the lessee; or

10 (c) Such an acknowledgment to the lessee by a carrier via reshipment or as [*warehouseman*] a  
 11 **warehouse.**

12 (3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence  
 13 to prevent delivery of the goods.

14 (b) After notification, the bailee shall hold and deliver the goods according to the directions of  
 15 the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

16 (c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification  
 17 to stop received from a person other than the consignor.

18 **SECTION 42.** ORS 72A.5270 is amended to read:

19 72A.5270. (1) After a default by a lessee under the lease contract of the type described in ORS  
 20 72A.5230 or after the lessor refuses to deliver or takes possession of goods as provided in ORS  
 21 72A.5250 or 72A.5260, or, if agreed, after other default by a lessee, the lessor may dispose of the  
 22 goods concerned or the undelivered balance thereof by lease, sale or otherwise.

23 (2) Except as otherwise provided with respect to damages liquidated in the lease agreement as  
 24 provided in ORS 72A.5040 or otherwise determined pursuant to agreement of the parties as provided  
 25 in ORS [*71.1020 and*] 72A.5030 **and section 15 of this 2009 Act**, if the disposition is by lease  
 26 agreement substantially similar to the original lease agreement and the new lease agreement is  
 27 made in good faith and in a commercially reasonable manner, the lessor may recover from the  
 28 lessee, as damages, accrued and unpaid rent as of the date of the commencement of the term of the  
 29 new lease agreement, the present value, as of the same date, of the total rent for the then remaining  
 30 lease term of the original lease agreement minus the present value, as of the same date, of the rent  
 31 under the new lease agreement applicable to that period of the new lease term which is comparable  
 32 to the then remaining term of the original lease agreement, and any incidental damages allowed  
 33 under ORS 72A.5300, less expenses saved in consequence of the lessee's default.

34 (3) If the lessor's disposition is by lease agreement that for any reason does not qualify for  
 35 treatment under subsection (2) of this section or is by sale or otherwise, the lessor may recover from  
 36 the lessee as if the lessor had elected not to dispose of the goods and ORS 72A.5280 governs.

37 (4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as  
 38 a result of a disposition under this section takes the goods free of the original lease contract and  
 39 any rights of the original lessee even though the lessor fails to comply with one or more of the re-  
 40 quirements of this chapter.

41 (5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee  
 42 who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any  
 43 excess over the amount of the lessee's security interest as provided in ORS 72A.5080.

44 **SECTION 43.** ORS 72A.5280 is amended to read:

45 72A.5280. (1) Except as otherwise provided with respect to damages liquidated in the lease



1 agreement as provided in ORS 72A.5040 or otherwise determined pursuant to agreement of the parties as provided in ORS [71.1020 and] 72A.5030 **and section 15 of this 2009 Act**, if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under ORS 72A.5270, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in ORS 72A.5230, or, if agreed, for other default of the lessee, accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, the present value as of the date determined under this section of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term and any incidental damages allowed under ORS 72A.5300, less expenses saved in consequence of the lessee's default.

2 (2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under ORS 72A.5300, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

3 **SECTION 44.** ORS 73.0103 is amended to read:

4 73.0103. (1) As used in this chapter:

5 (a) "Acceptor" means a drawee who has accepted a draft.

6 (b) "Drawee" means a person ordered in a draft to make payment.

7 (c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

8 [(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

9 [(e)] (d) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

10 [(f)] (e) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

11 [(g)] (f) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved under this chapter or ORS chapter 74.

12 [(h)] (g) "Party" means a party to an instrument.

13 [(i)] (h) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

14 [(j)] (i) "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in ORS [71.2010 (8)] **71.2010 (2)(h)**.

15 [(k)] (j) "Remitter" means a person who purchases an instrument from the issuer if the instru-

1 ment is payable to an identified person other than the purchaser.

2 (2) Other definitions applying to this chapter and the sections in which they appear are:

3	“Acceptance”	ORS 73.0409
4	“Accommodated party”	ORS 73.0419
5	“Accommodation party”	ORS 73.0419
6	“Alteration”	ORS 73.0407
7	“Anomalous indorsement”	ORS 73.0205
8	“Blank indorsement”	ORS 73.0205
9	“Cashier’s check”	ORS 73.0104
10	“Certificate of deposit”	ORS 73.0104
11	“Certified check”	ORS 73.0409
12	“Check”	ORS 73.0104
13	“Consideration”	ORS 73.0303
14	“Demand draft”	ORS 73.0104
15	“Draft”	ORS 73.0104
16	“Holder in due course”	ORS 73.0302
17	“Incomplete instrument”	ORS 73.0115
18	“Indorsement”	ORS 73.0204
19	“Indorser”	ORS 73.0204
20	“Instrument”	ORS 73.0104
21	“Issue”	ORS 73.0105
22	“Issuer”	ORS 73.0105
23	“Negotiable instrument”	ORS 73.0104
24	“Negotiation”	ORS 73.0201
25	“Note”	ORS 73.0104
26	“Payable at a definite time”	ORS 73.0108
27	“Payable on demand”	ORS 73.0108
28	“Payable to bearer”	ORS 73.0109
29	“Payable to order”	ORS 73.0109
30	“Payment”	ORS 73.0602
31	“Person entitled to enforce”	ORS 73.0301
32	“Presentment”	ORS 73.0501
33	“Reacquisition”	ORS 73.0207
34	“Special indorsement”	ORS 73.0205
35	“Teller’s check”	ORS 73.0104
36	“Transfer of instrument”	ORS 73.0203
37	“Traveler’s check”	ORS 73.0104
38	“Value”	ORS 73.0303

39 (3) The following definitions in ORS chapter 74 apply to this chapter:

40	“Bank”	ORS 74.1050
41	“Banking day”	ORS 74.1040
42	“Clearing house”	ORS 74.1040
43	“Collecting bank”	ORS 74.1050
44	“Depository bank”	ORS 74.1050
45	“Documentary draft”	ORS 74.1040

1	“Intermediary bank”	ORS 74.1050
2	“Item”	ORS 74.1040
3	“Payor bank”	ORS 74.1050
4	“Suspends payments”	ORS 74.1040

5 (4) In addition, ORS chapter 71 contains general definitions and principles of construction and  
6 interpretation applicable throughout this chapter.

7 **SECTION 45.** ORS 74.1040 is amended to read:

8 74.1040. (1) In this chapter, unless the context otherwise requires:

9 (a) “Account” means any deposit or credit account with a bank, including a demand, time,  
10 savings, passbook, share draft or like account, other than an account evidenced by a certificate of  
11 deposit.

12 (b) “Afternoon” means the period of a day between noon and midnight.

13 (c) “Banking day” has the meaning given that term in ORS 708A.650.

14 (d) “Clearing house” means an association of banks or other payors regularly clearing items.

15 (e) “Customer” means a person having an account with a bank or for whom a bank has agreed  
16 to collect items, including a bank that maintains an account at another bank.

17 (f) “Documentary draft” means a draft to be presented for acceptance or payment if specified  
18 documents, certificated securities defined in ORS 78.1020 or instructions for uncertificated securities  
19 described in ORS 78.1020, or other certificates, statements or the like are to be received by the  
20 drawee or other payor before acceptance or payment of the draft.

21 (g) “Draft” means a draft as defined in ORS 73.0104 or an item, other than an instrument, that  
22 is an order.

23 (h) “Drawee” means a person ordered in a draft to make payment.

24 (i) “Item” means an instrument or a promise or order to pay money handled by a bank for col-  
25 lection or payment. The term does not include a payment order governed by ORS chapter 74A or a  
26 credit or debit card slip.

27 (j) “Midnight deadline” with respect to a bank is midnight on its next banking day following the  
28 banking day on which it receives the relevant item or notice or from which the time for taking  
29 action commences to run, whichever is later.

30 (k) “Settle” means to pay in cash, by clearing house settlement, in a charge or credit or by re-  
31 mittance, or otherwise as agreed. A settlement may be either provisional or final.

32 (L) “Suspends payments” with respect to a bank means that it has been closed by order of the  
33 supervisory authorities, that a public officer has been appointed to take it over, or that it ceases  
34 or refuses to make payments in the ordinary course of business.

35 (2) Other definitions applying to this chapter and the sections in which they appear are:

36 (a) “Agreement for electronic presentment,” as defined in ORS 74.1100.

37 (b) “Bank,” as defined in ORS 74.1050.

38 (c) “Collecting bank,” as defined in ORS 74.1050.

39 (d) “Depositary bank,” as defined in ORS 74.1050.

40 (e) “Intermediary bank,” as defined in ORS 74.1050.

41 (f) “Payor bank,” as defined in ORS 74.1050.

42 (g) “Presenting bank,” as defined in ORS 74.1050.

43 (h) “Presentment notice,” as defined in ORS 74.1100.

44 (3) **“Control” as provided in section 54 of this 2009 Act and** the following definitions in other  
45 sections apply to this chapter:

- 1 (a) "Acceptance," as defined in ORS 73.0409.
- 2 (b) "Alteration," as defined in ORS 73.0407.
- 3 (c) "Cashier's check," as defined in ORS 73.0104.
- 4 (d) "Certificate of deposit," as defined in ORS 73.0104.
- 5 (e) "Certified check," as defined in ORS 73.0409.
- 6 (f) "Check," as defined in ORS 73.0104.
- 7 [(g) "Good faith," as defined in ORS 73.0103.]
- 8 [(h)] (g) "Holder in due course," as defined in ORS 73.0302.
- 9 [(i)] (h) "Instrument," as defined in ORS 73.0104.
- 10 [(j)] (i) "Notice of dishonor," as defined in ORS 73.0503.
- 11 [(k)] (j) "Order," as defined in ORS 73.0103.
- 12 [(L)] (k) "Ordinary care," as defined in ORS 73.0103.
- 13 [(m)] (L) "Person entitled to enforce," as defined in ORS 73.0301.
- 14 [(n)] (m) "Presentment," as defined in ORS 73.0501.
- 15 [(o)] (n) "Promise," as defined in ORS 73.0103.
- 16 [(p)] (o) "Prove," as defined in ORS 73.0103.
- 17 [(q)] (p) "Teller's check," as defined in ORS 73.0104.
- 18 [(r)] (q) "Unauthorized signature," as defined in ORS 73.0403.

19 (4) In addition, ORS chapter 71 contains general definitions and principles of construction and  
 20 interpretation applicable throughout this chapter.

21 **SECTION 46.** ORS 74.2100 is amended to read:

22 74.2100. (1) A collecting bank has a security interest in an item and in any accompanying doc-  
 23 uments or in the proceeds of either:

- 24 (a) In case of an item deposited in an account, to the extent to which credit given for the item  
 25 has been withdrawn or applied;
- 26 (b) In case of an item for which it has given credit available for withdrawal as of right, to the  
 27 extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-  
 28 back; or
- 29 (c) If it makes an advance on or against the item.

30 (2) If credit given for several items received at one time or pursuant to a single agreement is  
 31 withdrawn or applied in part, the security interest remains upon all the items, any accompanying  
 32 documents or the proceeds of either. For the purpose of this action, credits first given are first  
 33 withdrawn.

34 (3) Receipt by a collecting bank of a final settlement for an item is a realization on its security  
 35 interest in the item, accompanying documents and proceeds. So long as the bank does not receive  
 36 final settlement for the item or give up possession of the item or **possession or control of the** ac-  
 37 companying documents for purposes other than collection, the security interest continues to that  
 38 extent and is subject to ORS chapter 79, but:

- 39 (a) No security agreements are necessary to make the security interest enforceable under ORS  
 40 79.0203 (2)(c)(A);
- 41 (b) No filing is required to perfect the security interest; and
- 42 (c) The security interest has priority over conflicting perfected security interests in the item,  
 43 accompanying documents or proceeds.

44 **SECTION 46a.** ORS 74A.1050 is amended to read:

45 74A.1050. (1) As used in this chapter:

1 (a) "Authorized account" means a deposit account of a customer in a bank designated by the  
 2 customer as a source of payment of payment orders issued by the customer to the bank. If a cus-  
 3 tomer does not so designate an account, any account of the customer is an authorized account if  
 4 payment of a payment order from that account is not inconsistent with a restriction on the use of  
 5 that account.

6 (b) "Bank" means a financial institution, as defined in ORS 706.008. A branch or separate office  
 7 of a bank is a separate bank for purposes of this chapter.

8 (c) "Customer" means a person, including a bank, having an account with a bank or from whom  
 9 a bank has agreed to receive payment orders.

10 (d) "Funds-transfer business day" of a receiving bank means the part of a day during which the  
 11 receiving bank is open for the receipt, processing and transmittal of payment orders and cancella-  
 12 tions and amendments of payment orders.

13 (e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other  
 14 communication system of a clearing house or other association of banks through which a payment  
 15 order by a bank may be transmitted to the bank to which the order is addressed.

16 [(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of  
 17 fair dealing.]

18 [(g)] (f) "Prove" with respect to a fact means to meet the burden of establishing the fact.

19 (2) Other definitions applying to this chapter and the sections in which they appear are:

20

21	"Acceptance"	ORS 74A.2090
22	"Beneficiary"	ORS 74A.1030
23	"Beneficiary's bank"	ORS 74A.1030
24	"Executed"	ORS 74A.3010
25	"Execution date"	ORS 74A.3010
26	"Funds transfer"	ORS 74A.1040
27	"Funds-transfer system rule"	ORS 74A.5010
28	"Intermediary bank"	ORS 74A.1040
29	"Originator"	ORS 74A.1040
30	"Originator's bank"	ORS 74A.1040
31	"Payment by beneficiary's	
32	bank to beneficiary"	ORS 74A.4050
33	"Payment by originator to	
34	beneficiary"	ORS 74A.4060
35	"Payment by sender	
36	to receiving bank"	ORS 74A.4030
37	"Payment date"	ORS 74A.4010
38	"Payment order"	ORS 74A.1030
39	"Receiving bank"	ORS 74A.1030
40	"Security procedure"	ORS 74A.2010
41	"Sender"	ORS 74A.1030

42

43 (3) The following definitions in ORS chapter 74 apply to this chapter and ORS 71.1010:

44

45	"Clearing house"	ORS 74.1040
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1 “Item” ORS 74.1040

2 “Suspends payments” ORS 74.1040

3

4 (4) In addition ORS chapter 71 contains general definitions and principles of construction and  
5 interpretation applicable throughout this chapter.

6 **SECTION 47.** ORS 74A.1060 is amended to read:

7 74A.1060. (1) The time of receipt of a payment order or communication canceling or amending  
8 a payment order is determined by the rules applicable to receipt of a notice stated in ORS [71.2010  
9 (27)] **71.2020**. A receiving bank may fix a cut-off time or times on a funds-transfer business day for  
10 the receipt and processing of payment orders and communications canceling or amending payment  
11 orders. Different cut-off times may apply to payment orders, cancellations or amendments, or to  
12 different categories of payment orders, cancellations or amendments. A cut-off time may apply to  
13 senders generally or different cut-off times may apply to different senders or categories of payment  
14 orders. If a payment order or communication canceling or amending a payment order is received  
15 after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-  
16 transfer business day, the receiving bank may treat the payment order or communication as received  
17 at the opening of the next funds-transfer business day.

18 (2) If this chapter refers to an execution date or payment date or state a day on which a re-  
19 ceiving bank is required to take action, and the date or day does not fall on a funds-transfer busi-  
20 ness day, the next day that is a funds-transfer business day is treated as the date or day stated,  
21 unless the contrary is stated in this chapter.

22 **SECTION 48.** ORS 74A.2040 is amended to read:

23 74A.2040. (1) If a receiving bank accepts a payment order issued in the name of its customer as  
24 sender which is not authorized and not effective as the order of the customer under ORS 74A.2020  
25 or not enforceable, in whole or in part, against the customer under ORS 74A.2030, the bank shall  
26 refund any payment of the payment order received from the customer to the extent the bank is not  
27 entitled to enforce payment and shall pay interest on the refundable amount calculated from the  
28 date the bank received payment to the date of the refund. However, the customer is not entitled to  
29 interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care  
30 to determine that the order was not authorized by the customer and to notify the bank of the rele-  
31 vant facts within a reasonable time not exceeding 90 days after the date the customer received no-  
32 tification from the bank that the order was accepted or that the customer’s account was debited  
33 with respect to the order. The bank is not entitled to any recovery from the customer on account  
34 of a failure by the customer to give notification as stated in this section.

35 (2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in  
36 [ORS 71.2040] **section 15 (2) of this 2009 Act**, but the obligation of a receiving bank to refund  
37 payment as stated in subsection (1) of this section may not otherwise be varied by agreement.

38 **SECTION 49.** ORS 75.1030 is amended to read:

39 75.1030. (1) This chapter applies to letters of credit and to certain rights and obligations arising  
40 out of transactions involving letters of credit.

41 (2) The statement of a rule in this chapter does not by itself require, imply or negate application  
42 of the same or different rule to a situation not provided for, or to a person not specified in this  
43 chapter.

44 (3) With the exception of this subsection, subsections (1) and (4) of this section and ORS 75.1020  
45 (1)(i) and (j), 75.1060 (4) and 75.1140 (4), and except to the extent prohibited in [ORS 71.1020 (3)]

1 **section 15 of this 2009 Act** and **ORS 75.1170 (4)**, the effect of this chapter may be varied by  
 2 agreement or by a provision stated or incorporated by reference in an undertaking. A term in an  
 3 agreement or undertaking generally excusing liability or generally limiting remedies for failure to  
 4 perform obligations is not sufficient to vary obligations prescribed by this chapter.

5 (4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of  
 6 credit are independent of the existence, performance or nonperformance of a contract or arrange-  
 7 ment out of which the letter of credit arises or which underlies it, including contracts or arrange-  
 8 ments between the issuer and the applicant and between the applicant and the beneficiary.

9 **SECTION 50.** ORS 77.1020 is amended to read:

10 77.1020. (1) In this chapter, unless the context otherwise requires:

11 (a) “Bailee” means *[the]* a person *[who]* **that** by a warehouse receipt, bill of lading or other  
 12 document of title acknowledges possession of goods and contracts to deliver them.

13 **(b) “Carrier” means a person that issues a bill of lading.**

14 *[(b)]* (c) “Consignee” means *[the]* a person named in a bill **of lading** to *[whom]* **which** or to  
 15 whose order the bill promises delivery.

16 *[(c)]* (d) “Consignor” means *[the]* a person named in a bill **of lading** as the person from *[whom]*  
 17 **which** the goods have been received for shipment.

18 *[(d)]* (e) “Delivery order” means a *[written order]* **record that contains an order** to deliver  
 19 goods directed to a *[warehouseman]* **warehouse**, carrier or other person *[who]* **that** in the ordinary  
 20 course of business issues warehouse receipts or bills of lading.

21 *[(e) “Document” means document of title as defined in ORS 71.2010.]*

22 (f) “Goods” means all things *[which]* **that** are treated as movable for the purposes of a contract  
 23 *[of]* **for** storage or transportation.

24 (g) “Issuer” means a bailee *[who]* **that** issues a document **of title or, in the case of** *[except that*  
 25 *in relation to]* an unaccepted delivery order, *[it means]* the person *[who]* **that** orders the possessor  
 26 of goods to deliver. *[Issuer]* **The term** includes *[any]* a person for *[whom]* **which** an agent or em-  
 27 ployee purports to act in issuing a document if the agent or employee has real or apparent authority  
 28 to issue documents, *[notwithstanding that]* **even if** the issuer *[received no]* **did not receive any**  
 29 goods, *[or that]* the goods were misdescribed, or *[that]* in any other respect the agent or employee  
 30 violated **the issuer’s** instructions.

31 **(h) “Person entitled under the document” means the holder, in the case of a negotiable**  
 32 **document of title, or the person to which delivery of the goods is to be made by the terms**  
 33 **of, or pursuant to instructions in a record under, a nonnegotiable document of title.**

34 (i) “Record” means information that is inscribed on a tangible medium or that is stored  
 35 in an electronic or other medium and is retrievable in perceivable form.

36 (j) “Sign” means, with present intent to authenticate or adopt a record:

37 **(A) To execute or adopt a tangible symbol; or**

38 **(B) To attach to or logically associate with the record an electronic sound, symbol or**  
 39 **process.**

40 **(k) “Shipper” means a person that enters into a contract of transportation with a car-**  
 41 **rier.**

42 *[(h)]* (L) *[(Warehouseman) is]* **“Warehouse” means** a person engaged in the business of storing  
 43 goods for hire.

44 *[(2) Other definitions applying to this chapter and the sections in which they appear are:]*

45 *[(a) “Duly negotiate,” as defined in ORS 77.5010.]*

1        *[(b) "Person entitled under the document," as defined in ORS 77.4030 (4).]*

2        *[(3)]* **(2) Definitions in other [sections which apply] chapters applying to this chapter and the**  
 3 sections in which they appear are:

4        (a) "Contract for sale," as defined in ORS 72.1060.

5        *[(b) "Overseas," as defined in ORS 72.3230.]*

6        **(b) "Lessee in the ordinary course of business," as defined in ORS 72A.1030.**

7        (c) "Receipt" of goods, as defined in ORS 72.1030.

8        *[(4)]* **(3) In addition, ORS chapter 71 contains general definitions and principles of construction**  
 9 and interpretation applicable throughout this chapter.

10        **SECTION 51.** ORS 77.1030 is amended to read:

11        77.1030. *[To the extent that any treaty or statute of the United States, regulatory statute of this state*  
 12 *or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this*  
 13 *chapter are subject thereto.]* **(1) This chapter is subject to any treaty or statute of the United**  
 14 **States or regulatory statute of this state to the extent the treaty, statute or regulatory**  
 15 **statute is applicable.**

16        **(2) This chapter does not modify or repeal any law prescribing the form or content of a**  
 17 **document of title or the services or facilities to be afforded by a bailee, or otherwise regu-**  
 18 **lating a bailee's business in respects not specifically treated in this chapter. However, vio-**  
 19 **lation of such a law does not affect the status of a document of title that otherwise is within**  
 20 **the definition of a document of title.**

21        **(3) This chapter modifies, limits and supersedes the federal Electronic Signatures in**  
 22 **Global and National Commerce Act, 15 U.S.C. 7001 et seq., except that nothing in this chapter**  
 23 **modifies, limits or supercedes 7001(c) of that Act or authorizes electronic delivery of any of**  
 24 **the notices described in section 7003(b) of that Act.**

25        **(4) To the extent there is a conflict between the Uniform Electronic Transactions Act**  
 26 **and this chapter, this chapter governs.**

27        **SECTION 52.** ORS 77.1040 is amended to read:

28        77.1040. (1) *[A warehouse receipt, bill of lading or other]* **Except as otherwise provided in**  
 29 **subsection (3) of this section, a document of title is negotiable[.:]**

30        *[(a)]* if by its terms the goods are to be delivered to bearer or to the order of a named person.  
 31 *[: or]*

32        *[(b) Where recognized in overseas trade, if it runs to a named person or assigns.]*

33        *[(2) Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are*  
 34 *consigned to a named person is not made negotiable by a provision that the goods are to be delivered*  
 35 *only against a written order signed by the same or another named person.]*

36        **(2) A document of title other than one described in subsection (1) of this section is non-**  
 37 **negotiable. A bill of lading that states that the goods are consigned to a named person is not**  
 38 **made negotiable by a provision that the goods are to be delivered only against an order in a**  
 39 **record signed by the same or another named person.**

40        **(3) A document of title is nonnegotiable if, at the time it is issued, the document has a**  
 41 **conspicuous legend, however expressed, that it is nonnegotiable.**

42        **SECTION 53.** ORS 77.1050 is amended to read:

43        77.1050. *[The omission from ORS 77.2010 to 77.2100 of a provision contained in ORS 77.3010 to*  
 44 *77.3090 or the omission from ORS 77.3010 to 77.3090 of a provision contained in ORS 77.2010 to*  
 45 *77.2100 does not imply that a corresponding rule of law is not applicable.]* **(1) Upon request of a**



1 person entitled under an electronic document of title, the issuer of the electronic document  
2 may issue a tangible document of title as a substitute for the electronic document if:

3 (a) The person entitled under the electronic document surrenders control of the docu-  
4 ment to the issuer; and

5 (b) The tangible document when issued contains a statement that it is issued in substi-  
6 tution for the electronic document.

7 (2) Upon issuance of a tangible document of title in substitution for an electronic docu-  
8 ment of title in accordance with subsection (1) of this section:

9 (a) The electronic document ceases to have any effect or validity; and

10 (b) The person that procured issuance of the tangible document warrants to all subse-  
11 quent persons entitled under the tangible document that the warrantor was a person entitled  
12 under the electronic document when the warrantor surrendered control of the electronic  
13 document to the issuer.

14 (3) Upon request of a person entitled under a tangible document of title, the issuer of the  
15 tangible document may issue an electronic document of title as a substitute for the tangible  
16 document if:

17 (a) The person entitled under the tangible document surrenders possession of the docu-  
18 ment to the issuer; and

19 (b) The electronic document when issued contains a statement that it is issued in sub-  
20 stitution for the tangible document.

21 (4) Upon issuance of an electronic document of title in substitution for a tangible docu-  
22 ment of title in accordance with subsection (3) of this section:

23 (a) The tangible document ceases to have any effect or validity; and

24 (b) The person that procured issuance of the electronic document warrants to all subse-  
25 quent persons entitled under the electronic document that the warrantor was a person en-  
26 titled under the tangible document when the warrantor surrendered possession of the  
27 tangible document to the issuer.

28 **SECTION 54.** (1) A person has control of an electronic document of title if a system  
29 employed for evidencing the transfer of interests in the electronic document reliably estab-  
30 lishes that person as the person to which the electronic document was issued or transferred.

31 (2) A system satisfies subsection (1) of this section, and a person is deemed to have  
32 control of an electronic document of title, if the document is created, stored and assigned  
33 in such a manner that:

34 (a) A single authoritative copy of the document exists which is unique, identifiable and,  
35 except as otherwise provided in paragraphs (d), (e) and (f) of this subsection, unalterable;

36 (b) The authoritative copy identifies the person asserting control as:

37 (A) The person to which the document was issued; or

38 (B) If the authoritative copy indicates that the document has been transferred, the per-  
39 son to which the document was most recently transferred;

40 (c) The authoritative copy is communicated to and maintained by the person asserting  
41 control or a designated custodian;

42 (d) Copies or amendments that add or change an identified assignee of the authoritative  
43 copy can be made only with the consent of the person asserting control;

44 (e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as  
45 a copy that is not the authoritative copy; and

1 (f) Any amendment of the authoritative copy is readily identifiable as authorized or un-  
2 authorized.

3 **SECTION 55.** ORS 77.2010 is amended to read:

4 77.2010. (1) A warehouse receipt may be issued by any [warehouseman] **warehouse**.

5 (2) [Where] **If** goods, including distilled spirits and agricultural commodities, are stored under  
6 a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature  
7 of warehouse receipts, a receipt issued for the goods [has like effect as] **is deemed to be** a ware-  
8 house receipt even [though] **if** issued by a person [who] **that** is the owner of the goods and is not  
9 a [warehouseman] **warehouse**.

10 **SECTION 56.** ORS 77.2020 is amended to read:

11 77.2020. (1) A warehouse receipt need not be in any particular form.

12 (2) Unless a warehouse receipt [embodies within its written or printed terms] **provides for** each  
13 of the following, the [warehouseman] **warehouse** is liable for damages caused [by the omission] to  
14 a person injured [thereby] **by its omission**:

15 (a) **A statement of** the location of the warehouse **facility** where the goods are stored;

16 (b) The date of issue of the receipt;

17 (c) The [consecutive number] **unique identification code** of the receipt;

18 (d) A statement whether the goods received will be delivered to the bearer, to a [specified]  
19 **named** person, or to a [specified] **named** person or [the] **its** order [of that person];

20 (e) The rate of storage and handling charges, [except that where] **unless** goods are stored under  
21 a field warehousing arrangement, **in which case** a statement of that fact is sufficient on a nonne-  
22 gotiable receipt;

23 (f) A description of the goods or [of] the packages containing them;

24 (g) The signature of the [warehouseman, which may be made by the authorized agent of the  
25 warehouseman;] **warehouse or its agent**;

26 (h) If the receipt is issued for goods [of which the warehouseman is owner] **that the warehouse**  
27 **owns**, either solely, [or] jointly or in common with others, **a statement of** the fact of [such] **that**  
28 ownership; and

29 (i) A statement of the amount of advances made and of liabilities incurred for which the  
30 [warehouseman] **warehouse** claims a lien or security interest, [pursuant to ORS 77.2090. If] **unless**  
31 the precise amount of [such] advances made or of [such] liabilities incurred [is], at the time of the  
32 issue of the receipt, **is** unknown to the [warehouseman] **warehouse** or to [the] **its** agent [of the  
33 warehouseman who issues it,] **that issued the receipt, in which case** a statement of the fact that  
34 advances have been made or liabilities incurred and the purpose [thereof] **of the advances or li-**  
35 **abilities** is sufficient.

36 (3) A [warehouseman] **warehouse** may insert in [a] **its** receipt any [other] terms [which] **that** are  
37 not contrary to [the provisions of] the Uniform Commercial Code and do not impair [the] **its** obli-  
38 gation of delivery [as set forth in] **under** ORS 77.4030 or [the] **its** duty of care [as set forth in] **under**  
39 ORS 77.2040. Any contrary [provisions shall be] **provision is** ineffective.

40 **SECTION 57.** ORS 77.2030 is amended to read:

41 77.2030. A party to or purchaser for value in good faith of a document of title, other than a bill  
42 of lading, **that relies** [relying in either case] upon the description [therein] of the goods **in the**  
43 **document** may recover from the issuer damages caused by the nonreceipt or misdescription of the  
44 goods, except to the extent that:

45 (1) The document conspicuously indicates that the issuer does not know whether [any part or]

1 all **or part** of the goods in fact were received or conform to the description, **such** as *[where]* a **case**  
 2 **in which** the description is in terms of marks or labels or kind, quantity or condition, or the receipt  
 3 or description is qualified by “contents, condition and quality unknown,” “said to contain” or *[the*  
 4 *like]* **words of similar import**, if *[such]* **the** indication *[be]* **is true**[,]; or

5 (2) The party or purchaser otherwise has notice **of the nonreceipt or misdescription**.

6 **SECTION 58.** ORS 77.2040 is amended to read:

7 77.2040. (1) A *[warehouseman]* **warehouse** is liable for damages for loss of or injury to the goods  
 8 caused by *[the]* **its** failure *[of the warehouseman]* to exercise *[such]* care *[in]* **with** regard to *[them*  
 9 *as]* **the goods that** a reasonably careful person would exercise under *[like]* **similar** circumstances.  
 10 *[but]* Unless otherwise agreed, the *[warehouseman]* **warehouse** is not liable for damages *[which]* **that**  
 11 could not have been avoided by the exercise of *[such]* **that** care.

12 (2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting  
 13 the amount of liability in case of loss or damage[, *and setting forth a specific liability per article or*  
 14 *item, or value per unit of weight,*] beyond which the *[warehouseman shall not be liable; provided,*  
 15 *however, that such liability may on written]* **warehouse is not liable. Such a limitation is not ef-**  
 16 **fective with respect to the warehouse’s liability for conversion to its own use. On** request of  
 17 the bailor **in a record** at the time of signing *[such]* **the** storage agreement or within a reasonable  
 18 time after receipt of the warehouse receipt, **the warehouse’s liability may** be increased on part  
 19 or all of the goods *[thereunder,]* **covered by the storage agreement or warehouse receipt.** In  
 20 *[which]* **this** event, increased rates may be charged based on *[such]* **an** increased valuation **of the**  
 21 **goods.** [, *but that no such increase shall be permitted contrary to a lawful limitation of liability con-*  
 22 *tained in the warehouseman’s tariff, if any. No such limitation is effective with respect to the*  
 23 *warehouseman’s liability for conversion to the use of the warehouseman.*]

24 (3) Reasonable provisions as to the time and manner of presenting claims and *[instituting]*  
 25 **commencing** actions based on the bailment may be included in the warehouse receipt or *[tariff]*  
 26 **storage agreement.**

27 (4) This section does not **modify or** repeal *[or change]* any existing law or rule of law *[which]*  
 28 **that** imposes a higher responsibility upon the *[warehouseman]* **warehouse** or invalidates a contrac-  
 29 tual *[limitations which]* **limitation that** would be permissible under this chapter.

30 **SECTION 59.** ORS 77.2050 is amended to read:

31 77.2050. A buyer in *[the]* ordinary course of business of fungible goods sold and delivered by a  
 32 *[warehouseman who]* **warehouse that** is also in the business of buying and selling such goods takes  
 33 **the goods** free of any claim under a warehouse receipt even *[though it]* **if the receipt is negotiable**  
 34 **and** has been duly negotiated.

35 **SECTION 60.** ORS 77.2060 is amended to read:

36 77.2060. (1) A *[warehouseman may on notifying]* **warehouse, by giving notice to** the person on  
 37 whose account the goods are held and any other person known to claim an interest in the goods,  
 38 **may** require payment of any charges and removal of the goods from the warehouse at the termi-  
 39 nation of the period of storage fixed by the document **of title**, or, if *[no]* a period is **not** fixed, within  
 40 a stated period not less than 30 days after the *[notification]* **warehouse gives notice.** If the goods  
 41 are not removed before the date specified in the *[notification]* **notice**, the *[warehouseman]* **ware-**  
 42 **house** may sell them *[in accordance with the provisions of]* **pursuant to** ORS 77.2100. *[on enforcement*  
 43 *of a warehouseman’s lien.]*

44 (2) If a *[warehouseman]* **warehouse** in good faith believes that *[the]* goods are about to deteri-  
 45 orate or decline in value to less than the amount of *[the]* **its** lien *[of the warehouseman]* within the

1 time *[prescribed]* **provided** in subsection (1) of this section *[for notification, advertisement and sale,*  
 2 *the warehouseman]* **and ORS 77.2100, the warehouse** may specify in the *[notification]* **notice given**  
 3 **under subsection (1) of this section** any reasonable shorter time for removal of the goods and,  
 4 *[in case]* **if** the goods are not removed, may sell them at public sale held not less than one week after  
 5 a single advertisement or posting.

6 (3) If as a result of a quality or condition of the goods of which the *[warehouseman had no]*  
 7 **warehouse did not have** notice at the time of deposit the goods are a hazard to other property,  
 8 *[or to]* the warehouse **facilities** or *[to]* **other** persons, the *[warehouseman]* **warehouse** may sell the  
 9 goods at public or private sale without advertisement **or posting** on reasonable notification to all  
 10 persons known to claim an interest in the goods. If the *[warehouseman]* **warehouse**, after a rea-  
 11 sonable effort, is unable to sell the goods *[the warehouseman]* **it** may dispose of them in any lawful  
 12 manner and *[shall incur no]* **does not incur** liability by reason of *[such]* **that** disposition.

13 (4) *[The warehouseman must]* **A warehouse shall** deliver the goods to any person entitled to  
 14 them under this chapter upon due demand made at any time *[prior to]* **before** sale or other disposi-  
 15 tion under this section.

16 (5) *[The warehouseman]* **A warehouse** may satisfy *[the]* **its** lien *[of the warehouseman]* from the  
 17 proceeds of any sale or disposition under this section but *[must]* **shall** hold the balance for delivery  
 18 on the demand of any person to *[whom]* **which** the *[warehouseman]* **warehouse** would have been  
 19 bound to deliver the goods.

20 **SECTION 61.** ORS 77.2070 is amended to read:

21 77.2070. (1) Unless the warehouse receipt **provides** otherwise, *[provides, a warehouseman must]*  
 22 **a warehouse shall** keep separate the goods covered by each receipt so as to permit at all times  
 23 identification and delivery of those goods *[except that]*. **However**, different lots of fungible goods  
 24 may be commingled.

25 (2) **If different lots of** fungible goods *[so]* **are** commingled, **the goods** are owned in common  
 26 by the persons entitled thereto and the *[warehouseman]* **warehouse** is severally liable to each owner  
 27 for that owner's share. *[Where]* **If**, because of overissue, a mass of fungible goods is insufficient to  
 28 meet all the receipts *[which the warehouseman]* **the warehouse** has issued against it, the persons  
 29 entitled include all holders to *[whom]* **which** overissued receipts have been duly negotiated.

30 **SECTION 62.** ORS 77.2080 is amended to read:

31 77.2080. *[Where]* **If** a blank in a negotiable **tangible** warehouse receipt has been filled in without  
 32 authority, a **good-faith** purchaser for value and without notice of the *[want]* **lack** of authority may  
 33 treat the insertion as authorized. Any other unauthorized alteration leaves any **tangible or elec-**  
 34 **tronic warehouse** receipt enforceable against the issuer according to its original tenor.

35 **SECTION 63.** ORS 77.2090 is amended to read:

36 77.2090. (1) A *[warehouseman]* **warehouse** has a lien against the bailor on the goods covered by  
 37 a warehouse receipt or **storage agreement or** on the proceeds thereof in *[the]* **its** possession *[of the*  
 38 *warehouseman]* for charges for storage or transportation, *[including demurrage and terminal*  
 39 *charges]*, insurance, labor[,] or **other** charges, present or future, in relation to the goods, and for  
 40 expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to  
 41 law. If the person on whose account the goods are held is liable for *[like]* **similar** charges or ex-  
 42 penses in relation to other goods whenever deposited and it is stated in the **warehouse** receipt **or**  
 43 **storage agreement** that a lien is claimed for charges and expenses in relation to other goods, the  
 44 *[warehouseman]* **warehouse** also has a lien against the *[person for such]* **goods covered by the**  
 45 **warehouse receipt or storage agreement or on the proceeds thereof in its possession for**

1 **those** charges and expenses whether or not the other goods have been delivered by the  
 2 *[warehouseman]* **warehouse**. *[But]* **However, as** against a person to *[whom]* **which** a negotiable  
 3 warehouse receipt is duly negotiated, a *[warehouseman's]* **warehouse's** lien is limited to charges in  
 4 an amount or at a rate specified *[on]* **in** the **warehouse** receipt or, if no charges are so specified,  
 5 *[then]* to a reasonable charge for storage of the **specific** goods covered by the receipt subsequent  
 6 to the date of the receipt.

7 (2) The *[warehouseman]* **warehouse** may also reserve a security interest against the bailor for  
 8 *[a]* **the** maximum amount specified on the receipt for charges other than those specified in sub-  
 9 section (1) of this section, such as for money advanced and interest. *[Such a]* **The** security interest  
 10 is governed by ORS chapter 79. *[on secured transactions.]*

11 (3) A *[warehouseman's]* **warehouse's** lien for charges and expenses under subsection (1) of this  
 12 section or a security interest under subsection (2) of this section is also effective against *[all persons*  
 13 *if the bailor was the legal possessor of the goods at the time of deposit.]* **any person that so en-**  
 14 **trusted the bailor with possession of the goods that a pledge of them by the bailor to a**  
 15 **good-faith purchaser for value would have been valid. However, the lien or security interest**  
 16 **is not effective against a person that before issuance of a document of title had a legal in-**  
 17 **terest or a perfected security interest in the goods and that did not:**

18 (a) **Deliver or entrust the goods or any document of title covering the goods to the bailor**  
 19 **or the bailor's nominee with:**

20 (A) **Actual or apparent authority to ship, store or sell;**

21 (B) **Power to obtain delivery under ORS 77.4030; or**

22 (C) **Power of disposition under ORS 72.4030, 72A.3040 (2), 72A.3050 (2), 79.0320 or 79.0321**

23 **(3) or other statute or rule of law; or**

24 **(b) Acquiesce in the procurement by the bailor or its nominee of any document.**

25 (4) **A warehouse's lien on household goods for charges and expenses in relation to the**  
 26 **goods under subsection (1) of this section is also effective against all persons if the depositor**  
 27 **was the legal possessor of the goods at the time of deposit. In this subsection, "household**  
 28 **goods" means furniture, furnishings or personal effects used by the depositor in a dwelling.**

29 *[(4)]* (5) A *[warehouseman loses the lien of the warehouseman]* **warehouse loses its lien** on any  
 30 goods *[which the warehouseman]* **that it** voluntarily delivers or *[which the warehouseman]*  
 31 unjustifiably refuses to deliver.

32 **SECTION 64.** ORS 77.2100 is amended to read:

33 77.2100. (1) Except as **otherwise** provided in subsection (2) of this section, a *[warehouseman's]*  
 34 **warehouse's** lien may be enforced by public or private sale of the goods, in *[bloc]* **bulk** or in *[par-*  
 35 *cels]* **packages**, at any time or place and on any terms *[which]* **that** are commercially reasonable,  
 36 after notifying all persons known to claim an interest in the goods. *[Such]* **The** notification must  
 37 include a statement of the amount due, the nature of the proposed sale and the time and place of  
 38 any public sale. The fact that a better price could have been obtained by a sale at a different time  
 39 or in a *[different]* method **different** from that selected by the *[warehouseman]* **warehouse** is not of  
 40 itself sufficient to establish that the sale was not made in a commercially reasonable manner. *[If the*  
 41 *warehouseman either sells the goods]* **The warehouse sells in a commercially reasonable manner**  
 42 **if the warehouse sells the goods** in the usual manner in any recognized market therefor, *[or if the*  
 43 *warehouseman]* sells at the price current in *[such]* **that** market at the time of sale[,] or *[if the*  
 44 *warehouseman has otherwise sold]* **otherwise sells** in conformity with commercially reasonable  
 45 practices among dealers in the type of goods sold. *[, the warehouseman has sold in a commercially*

1 *reasonable manner.*] A sale of more goods than apparently necessary to be offered to [*insure*] **ensure**  
 2 satisfaction of the obligation is not commercially reasonable except in cases covered by the pre-  
 3 ceding sentence.

4 (2) A [*warehouseman's*] **warehouse may enforce its** lien on goods other than goods stored by  
 5 a merchant in the course of **its** business [*may be enforced only as follows:*] **only if the following**  
 6 **requirements are satisfied:**

7 (a) All persons known to claim an interest in the goods must be notified.

8 [(b) *The notification must be delivered in person or sent by registered letter to the last-known ad-*  
 9 *dress of any person to be notified.*]

10 [(c)] (b) The notification must include an itemized statement of the claim, a description of the  
 11 goods subject to the lien, a demand for payment within a specified time not less than 10 days after  
 12 receipt of the notification, and a conspicuous statement that unless the claim is paid within that  
 13 time the goods will be advertised for sale and sold by auction at a specified time and place.

14 [(d)] (c) The sale must conform to the terms of the notification.

15 [(e)] (d) The sale must be held at the nearest suitable place to [*that*] where the goods are held  
 16 or stored.

17 [(f)] (e) After the expiration of the time given in the notification, an advertisement of the sale  
 18 must be published once a week for two weeks consecutively in a newspaper of general circulation  
 19 where the sale is to be held. The advertisement must include a description of the goods, the name  
 20 of the person on whose account [*they*] **the goods** are being held, and the time and place of the sale.  
 21 The sale must take place at least 15 days after the first publication. If there is no newspaper of  
 22 general circulation where the sale is to be held, the advertisement must be posted at least 10 days  
 23 before the sale in not [*less*] **fewer** than six conspicuous places in the neighborhood of the proposed  
 24 sale.

25 (3) Before any sale pursuant to this section any person claiming a right in the goods may pay  
 26 the amount necessary to satisfy the lien and the reasonable expenses incurred [*under*] **in complying**  
 27 **with** this section. In that event the goods [*must*] **may** not be sold[,] but must be retained by the  
 28 [*warehouseman*] **warehouse** subject to the terms of the receipt and this chapter.

29 (4) [*The warehouseman*] **A warehouse** may buy at any public sale **held** pursuant to this section.

30 (5) A purchaser in good faith of goods sold to enforce a [*warehouseman's*] **warehouse's** lien  
 31 takes the goods free of any rights of persons against [*whom*] **which** the lien was valid, despite **the**  
 32 **warehouse's** noncompliance [*by the warehouseman with the requirements of*] **with** this section.

33 (6) [*The warehouseman*] **A warehouse** may satisfy [*the*] **its** lien [*of the warehouseman*] from the  
 34 proceeds of any sale pursuant to this section but [*must*] **shall** hold the balance, if any, for delivery  
 35 on demand to any person to [*whom the warehouseman*] **which the warehouse** would have been  
 36 bound to deliver the goods.

37 (7) The rights provided by this section [*shall be*] **are** in addition to all other rights allowed by  
 38 law to a creditor against a debtor.

39 (8) [*Where*] **If** a lien is on goods stored by a merchant in the course of **the merchant's**  
 40 business, the lien may be enforced in accordance with [*either*] subsection (1) or (2) of this section.

41 (9) [*The warehouseman*] **A warehouse** is liable for damages caused by failure to comply with the  
 42 requirements for sale under this section and in case of willful violation is liable for conversion.

43 **SECTION 65.** ORS 77.3010 is amended to read:

44 77.3010. (1) A consignee of a nonnegotiable bill [*who*] **of lading which** has given value in good  
 45 faith or a holder to [*whom*] **which** a negotiable bill has been duly negotiated relying [*in either*

1 case] upon the description [therein] of the goods[,] **in the bill** or upon the date [therein] shown **in**  
 2 **the bill**, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt  
 3 or misdescription of the goods, except to the extent that the [document] **bill** indicates that the issuer  
 4 does not know whether any part or all of the goods in fact were received or conform to the de-  
 5 scription, [as where] **such as in a case in which** the description is in terms of marks or labels or  
 6 kind, quantity or condition or the receipt or description is qualified by “contents or condition of  
 7 contents of packages unknown,” “said to contain,” “shipper’s weight, load and count” or [the like]  
 8 **words of similar import**, if [such] **that** indication [be] **is** true.

9 (2) [When] **If** goods are loaded by [an] **the issuer of a bill of lading**:

10 (a) [who is a common carrier, the issuer must] **The issuer shall** count the packages of goods if  
 11 [package freight] **shipped in packages** and ascertain the kind and quantity if **shipped in** bulk  
 12 [freight.]; **and**

13 (b) [In such cases] **Words such as** “shipper’s weight, load and count” or [other] words **of sim-**  
 14 **ilar import** indicating that the description was made by the shipper are ineffective except as to  
 15 [freight] **goods** concealed [by] **in** packages.

16 (3) [When bulk freight is] **If bulk goods are** loaded by a shipper [who] **that** makes available to  
 17 the issuer **of a bill of lading** adequate facilities for weighing [such freight] **those goods**, [an] **the**  
 18 issuer [who is a common carrier must] **shall** ascertain the kind and quantity within a reasonable time  
 19 after receiving the [written request of the shipper] **shipper’s request in a record** to do so. In [such  
 20 cases] **that case**, “shipper’s weight” or other words of [like purport] **similar import** are ineffective.

21 (4) The issuer **of a bill of lading, by including** [may by inserting] in the bill the words “shipper’s  
 22 weight, load and count” or [other] words of [like purport] **similar import, may** indicate that the  
 23 goods were loaded by the shipper[;], and if [such] **that** statement [be] **is** true, the issuer [shall] **is**  
 24 not [be] liable for damages caused by the improper loading. [But their] **However, omission of such**  
 25 **words** does not imply liability for [such] damages **caused by improper loading**.

26 (5) [The] **A** shipper [shall be deemed to have guaranteed to the] **guarantees to an** issuer the ac-  
 27 curacy at the time of shipment of the description, marks, labels, number, kind, quantity, condition  
 28 and weight, as furnished by the shipper[; and]. The shipper shall indemnify the issuer against dam-  
 29 age caused by inaccuracies in [such] **those** particulars. [The] **This** right [of the issuer to such  
 30 indemnity shall in no way] **of indemnity does not** limit the **issuer’s** responsibility [and] **or** liability  
 31 [of the issuer] under the contract of carriage to any person other than the shipper.

32 **SECTION 66.** ORS 77.3020 is amended to read:

33 77.3020. (1) The issuer of a through bill of lading or other document **of title** embodying an  
 34 undertaking to be performed in part by [persons] **a person** acting as its [agents] **agent** or by [con-  
 35 necting carriers] **a performing carrier** is liable to [anyone] **any person** entitled to recover on the  
 36 **bill or other** document for any breach by [such other persons or by a connecting] **the other person**  
 37 **or the performing** carrier of its obligation under the **bill or other** document. [but] **However,** to  
 38 the extent that the bill **or other document** covers an undertaking to be performed overseas or in  
 39 territory not contiguous to the continental United States or an undertaking including matters other  
 40 than transportation, this liability **for breach by the other person or the performing carrier** may  
 41 be varied by agreement of the parties.

42 (2) [Where] **If** goods covered by a through bill of lading or other document **of title** embodying  
 43 an undertaking to be performed in part by [persons] **a person** other than the issuer are received by  
 44 [any such] **that** person, the person is subject with respect to [the] **its own** performance [of the  
 45 person] while the goods are in [the] **its** possession [of the person] to the obligation of the issuer. The

1 **person's** obligation [*of the person*] is discharged by delivery of the goods to another [*such*] person  
 2 pursuant to the **bill or other** document[,] and does not include liability for breach by any other  
 3 [*such persons*] **person** or by the issuer.

4 (3) The issuer of [*such*] a through bill of lading or other document **of title described in sub-**  
 5 **section (1) of this section is** [*shall be*] entitled to recover from the [*connecting*] **performing**  
 6 carrier, or [*such*] other person in possession of the goods when the breach of the obligation under  
 7 the **bill or other** document occurred[,]:

8 (a) The amount it may be required to pay to [*anyone*] **any person** entitled to recover on the  
 9 **bill or other** document [*therefor*] **for the breach**, as may be evidenced by any receipt, judgment or  
 10 transcript [*thereof*,] **of judgment**; and

11 (b) The amount of any expense reasonably incurred by [*it*] **the issuer** in defending any action  
 12 [*brought*] **commenced** by [*anyone*] **any person** entitled to recover on the **bill or other** document  
 13 [*therefor*] **for the breach**.

14 **SECTION 67.** ORS 77.3030 is amended to read:

15 77.3030. (1) Unless the bill of lading otherwise provides, [*the*] a carrier may deliver the goods  
 16 to a person or destination other than that stated in the bill or may otherwise dispose of the goods,  
 17 **without liability for misdelivery**, on instructions from:

18 (a) The holder of a negotiable bill; [*or*]

19 (b) The consignor on a nonnegotiable bill, [*notwithstanding*] **even if the consignee has given**  
 20 contrary instructions; [*from the consignee; or*]

21 (c) The consignee on a nonnegotiable bill in the absence of contrary instructions from the  
 22 consignor, if the goods have arrived at the billed destination or if the consignee is in possession of  
 23 the **tangible bill or in control of the electronic** bill; or

24 (d) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor  
 25 to dispose of [*them*] **the goods**.

26 (2) Unless [*such*] instructions **described in subsection (1) of this section** are [*noted on*] **in-**  
 27 **cluded in** a negotiable bill of lading, a person to [*whom*] **which** the bill is duly negotiated [*can*]  
 28 **may** hold the bailee according to the original terms.

29 **SECTION 68.** ORS 77.3040 is amended to read:

30 77.3040. (1) Except [*where*] **as** customary in [*overseas*] **international** transportation, a **tangible**  
 31 bill of lading [*must*] **may** not be issued in a set of parts. The issuer is liable for damages caused by  
 32 violation of this subsection.

33 (2) [*Where a*] **If a tangible** bill of lading is lawfully [*drawn*] **issued** in a set of parts, each of  
 34 which [*is numbered*] **contains an identification code** and **is** expressed to be valid only if the goods  
 35 have not been delivered against any other part, the whole of the parts [*constitute*] **constitutes** one  
 36 bill.

37 (3) [*Where a*] **If a tangible negotiable** bill of lading is lawfully issued in a set of parts and dif-  
 38 ferent parts are negotiated to different persons, the title of the holder to [*whom*] **which** the first due  
 39 negotiation is made prevails as to both the document **of title** and the goods even [*though*] **if** any  
 40 later holder may have received the goods from the carrier in good faith and discharged the carrier's  
 41 obligation by [*surrender of the part of the later holder.*] **surrendering its part**.

42 (4) [*Any*] **A** person [*who*] **that** negotiates or transfers a single part of a **tangible** bill of lading  
 43 [*drawn*] **issued** in a set is liable to holders of that part as if it were the whole set.

44 (5) The bailee [*is obliged to*] **shall** deliver in accordance with ORS 77.4010 to 77.4040 against the  
 45 first presented part of a **tangible** bill of lading lawfully [*drawn*] **issued** in a set. [*Such*] Delivery **in**



1 **this manner** discharges the bailee's obligation on the whole bill.

2 **SECTION 69.** ORS 77.3050 is amended to read:

3 77.3050. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier  
4 [may] at the request of the consignor **may** procure the bill to be issued at destination or at any  
5 other place designated in the request.

6 (2) Upon request of [anyone] **any person** entitled as against [the] a carrier to control the goods  
7 while in transit and on surrender **of possession or control** of any outstanding bill of lading or other  
8 receipt covering [such] **the** goods, the issuer, **subject to ORS 77.1050**, may procure a substitute bill  
9 to be issued at any place designated in the request.

10 **SECTION 70.** ORS 77.3070 is amended to read:

11 77.3070. (1) A carrier has a lien on the goods covered by a bill of lading **or on the proceeds**  
12 **thereof in the carrier's possession** for charges [subsequent to] **after** the date of [its] **the carrier's**  
13 receipt of the goods for storage or transportation, [(including demurrage and terminal charges)],  
14 and for expenses necessary for preservation of the goods incident to their transportation or rea-  
15 sonably incurred in their sale pursuant to law. [But] **However**, against a purchaser for value of a  
16 negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable  
17 tariffs[,] or, if no charges are stated, [then to] a reasonable charge.

18 (2) A lien for charges and expenses under subsection (1) of this section on goods [which] **that**  
19 the carrier was required by law to receive for transportation is effective against the consignor or  
20 any person entitled to the goods unless the carrier had notice that the consignor lacked authority  
21 to subject the goods to [such] **those** charges and expenses. Any other lien under subsection (1) of  
22 this section is effective against the consignor and any person [who] **that** permitted the bailor to  
23 have control or possession of the goods unless the carrier had notice that the bailor lacked [such]  
24 authority.

25 (3) A carrier loses [the lien of the carrier] **its lien** on any goods [which the carrier] **that it** vol-  
26 untarily delivers or [which the carrier] unjustifiably refuses to deliver.

27 **SECTION 71.** ORS 77.3080 is amended to read:

28 77.3080. (1) A carrier's lien **on goods** may be enforced by public or private sale of the goods, in  
29 [bloc or in parcels] **bulk or in packages**, at any time or place and on any terms [which] **that** are  
30 commercially reasonable, after notifying all persons known to claim an interest in the goods.  
31 [Such] **The** notification must include a statement of the amount due, the nature of the proposed sale  
32 and the time and place of any public sale. The fact that a better price could have been obtained by  
33 a sale at a different time or in a [different] method **different** from that selected by the carrier is  
34 not of itself sufficient to establish that the sale was not made in a commercially reasonable manner.  
35 [If] The carrier [either] sells [the] goods in [the usual] **a commercially reasonable manner if the**  
36 **carrier sells the goods in the usual manner** in any recognized market therefor, [or if the  
37 carrier] sells at the price current in [such] **that** market at the time of sale or [if the carrier has  
38 otherwise sold] **otherwise sells** in conformity with commercially reasonable practices among dealers  
39 in the type of goods sold. [the carrier has sold in a commercially reasonable manner.] A sale of more  
40 goods than apparently necessary to be offered to [insure] **ensure** satisfaction of the obligation is not  
41 commercially reasonable except in cases covered by the preceding sentence.

42 (2) Before any sale pursuant to this section any person claiming a right in the goods may pay  
43 the amount necessary to satisfy the lien and the reasonable expenses incurred [under] **in complying**  
44 **with** this section. In that event, the goods [must] **may** not be sold[,] but must be retained by the  
45 carrier subject to the terms of the bill **of lading** and this chapter.

1 (3) *[The]* **A** carrier may buy at any public sale pursuant to this section.

2 (4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of  
3 any rights of persons against *[whom]* **which** the lien was valid, despite **the carrier's** noncompliance  
4 *[by the carrier with the requirements of]* **with** this section.

5 (5) *[The]* **A** carrier may satisfy *[the]* **its** lien *[of the carrier]* from the proceeds of any sale pur-  
6 suant to this section but *[must]* **shall** hold the balance, if any, for delivery on demand to any person  
7 to *[whom]* **which** the carrier would have been bound to deliver the goods.

8 (6) The rights provided by this section *[shall be]* **are** in addition to all other rights allowed by  
9 law to a creditor against a debtor *[of the creditor]*.

10 (7) A carrier's lien may be enforced *[in accordance with]* **pursuant to** either subsection (1) of  
11 this section or the procedure set forth in ORS 77.2100 (2).

12 (8) *[The]* **A** carrier is liable for damages caused by failure to comply with the requirements for  
13 sale under this section and in case of willful violation is liable for conversion.

14 **SECTION 72.** ORS 77.3090 is amended to read:

15 77.3090. (1) A carrier *[who]* **that** issues a bill of lading, whether negotiable or nonnegotiable,  
16 *[must]* **shall** exercise the degree of care in relation to the goods which a reasonably careful person  
17 would exercise under *[like]* **similar** circumstances. This subsection does not *[repeal or change]* **affect**  
18 any *[law]* **statute, regulation** or rule of law *[which]* **that** imposes liability upon a common carrier  
19 for damages not caused by its negligence.

20 (2) Damages may be limited by a *[provision]* **term in the bill of lading or in a transportation**  
21 **agreement** that the carrier's liability *[shall]* **may** not exceed a value stated in the *[document]* **bill**  
22 **or transportation agreement** if the carrier's rates are dependent upon value and the consignor  
23 *[by the carrier's tariff]* is afforded an opportunity to declare a higher value *[or a value as lawfully*  
24 *provided in the tariff, or where no tariff is filed]* **and** the consignor is *[otherwise advised of such]*  
25 **advised of the** opportunity<sup>]; but no</sup> **However,** such a limitation is **not** effective with respect to the  
26 carrier's liability for conversion to its own use.

27 (3) Reasonable provisions as to the time and manner of presenting claims and *[instituting]*  
28 **commencing** actions based on the shipment may be included in a bill of lading or *[tariff]* **a trans-**  
29 **portation agreement.**

30 **SECTION 73.** ORS 77.4010 is amended to read:

31 77.4010. The obligations imposed by this chapter on an issuer apply to a document of title *[re-*  
32 *gardless of the fact that]* **even if:**

33 (1) The document *[may]* **does** not comply with the requirements of this chapter or of any other  
34 *[law]* **statute, rule** or regulation regarding its *[issue]* **issuance,** form or content; *[or]*

35 (2) The issuer *[may have]* violated laws regulating the conduct of *[the]* **its** business; *[of the issuer;*  
36 *or]*

37 (3) The goods covered by the document were owned by the bailee *[at the time]* **when** the docu-  
38 ment was issued; or

39 (4) The person issuing the document *[does]* **is** not *[come within the definition of warehouseman*  
40 *if it]* **a warehouse but the document** purports to be a warehouse receipt.

41 **SECTION 74.** ORS 77.4020 is amended to read:

42 77.4020. *[Neither]* A duplicate *[nor]* **or** any other document of title purporting to cover goods  
43 already represented by an outstanding document of the same issuer *[confers]* **does not confer** any  
44 right in the goods, except as provided in the case of **tangible bills of lading** in a set **of parts,**  
45 overissue of documents for fungible goods, *[and]* substitutes for lost, stolen or destroyed documents

1 **or substitute documents issued pursuant to ORS 77.1050.** [*But*] The issuer is liable for damages  
 2 caused by **its** overissue or failure to identify a duplicate document [*as such*] by conspicuous notation  
 3 [*on its face*].

4 **SECTION 75.** ORS 77.4030 is amended to read:

5 77.4030. (1) [*The*] **A** bailee [*must*] **shall** deliver the goods to a person entitled under [*the*] **a** doc-  
 6 ument [*who*] **of title if the person** complies with subsections (2) and (3) of this section unless and  
 7 to the extent that the bailee establishes any of the following:

8 (a) Delivery of the goods to a person whose receipt was rightful as against the claimant[.];

9 (b) Damage to or delay, loss or destruction of the goods for which the bailee is not liable; [*but*  
 10 *the burden of establishing negligence in such cases is on the person entitled under the document.*]

11 (c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on  
 12 [*warehouseman's*] **a warehouse's** lawful termination of storage[.];

13 (d) The exercise by a seller of [*the*] **its** right [*of the seller*] to stop delivery pursuant to [*the*  
 14 *provisions of*] ORS 72.7050[.] **or by a lessor of its right to stop delivery pursuant to ORS**  
 15 **72A.5260;**

16 (e) A diversion, reconsignment or other disposition pursuant to [*the provisions of*] ORS 77.3030;  
 17 [*or tariff regulating such right.*]

18 (f) Release, satisfaction or any other [*fact affording a*] personal defense against the claimant[.];

19 **or**

20 (g) Any other lawful excuse.

21 (2) A person claiming goods covered by a document of title [*must*] **shall** satisfy the bailee's lien  
 22 [*where*] **if** the bailee so requests or [*where*] **if** the bailee is prohibited by law from delivering the  
 23 goods until the charges are paid.

24 (3) Unless [*the*] **a** person claiming **the goods** is [*one*] **a person** against [*whom*] **which** the docu-  
 25 ment [*confers no*] **of title does not confer a** right under ORS 77.5030 (1)[.];

26 (a) The person [*must*] **claiming under the document shall** surrender [*for cancellation or nota-*  
 27 *tion of partial deliveries*] **possession or control of** any outstanding negotiable document covering  
 28 the goods[.] **for cancellation or indication of partial deliveries;** and

29 (b) The bailee [*must*] **shall** cancel the document or conspicuously [*note*] **indicate in the docu-**  
 30 **ment** the partial delivery [*thereon*] or [*be*] **the bailee is** liable to any person to [*whom*] **which** the  
 31 document is duly negotiated.

32 [(4) "*Person entitled under the document*" means holder in the case of a negotiable document, or  
 33 *the person to whom delivery is to be made by the terms of or pursuant to written instructions under*  
 34 *a nonnegotiable document.*]

35 **SECTION 76.** ORS 77.4040 is amended to read:

36 77.4040. A bailee [*who*] **that** in good faith [*including observance of reasonable commercial stan-*  
 37 *dards*] has received goods and delivered or otherwise disposed of [*them*] **the goods** according to the  
 38 terms of [*the*] **a** document of title or pursuant to this chapter is not liable [*therefor.*] **for the goods**  
 39 **even if:**

40 (1) [*This rule applies even though*] The person from [*whom*] **which** the bailee received the goods  
 41 [*had no*] **did not have** authority to procure the document or to dispose of the goods; **or**

42 (2) [*and even though*] The person to [*whom*] **which** the bailee delivered the goods [*had no*] **did**  
 43 **not have** authority to receive [*them*] **the goods.**

44 **SECTION 77.** ORS 77.5010 is amended to read:

45 77.5010. (1) **The following rules apply to** a negotiable **tangible** document of title:

1       **(a) If the document's original terms run** *[running]* to the order of a named person, **the**  
 2 **document** is negotiated by **the named person's** indorsement *[of the named person]* and delivery.  
 3 After **the named person's** indorsement in blank or to bearer, any person *[can]* **may** negotiate *[it]*  
 4 **the document** by delivery alone.

5       *[(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms*  
 6 *it runs to bearer.]*

7       **(b) [When a document running] If the document's original terms run to bearer, it is nego-**  
 8 **tiated by delivery alone.**

9       **(c) If the document's original terms run** to the order of a named person **and the document**  
 10 is delivered to the **named** person, the effect is the same as if the document had been negotiated.

11       *[(3)] (d) Negotiation of [a negotiable document of title] the document* after it has been indorsed  
 12 to a *[specified]* **named** person requires indorsement by the *[special indorsee as well as]* **named per-**  
 13 **son and** delivery.

14       *[(4)] (e) A [negotiable] document [of title] is ["duly negotiated]" when]* if it is negotiated in the  
 15 manner stated in this *[section]* **subsection** to a holder *[who]* **that** purchases it in good faith, without  
 16 notice of any defense against or claim to it on the part of any person, and for value, unless it is  
 17 established that the negotiation is not in the regular course of business or financing or involves  
 18 receiving the document in settlement or payment of a *[money]* **monetary** obligation.

19       **(2) The following rules apply to a negotiable electronic document of title:**

20       **(a) If the document's original terms run to the order of a named person or to bearer, the**  
 21 **document is negotiated by delivery of the document to another person. Indorsement by the**  
 22 **named person is not required to negotiate the document.**

23       **(b) If the document's original terms run to the order of a named person and the named**  
 24 **person has control of the document, the effect is the same as if the document had been ne-**  
 25 **gotiated.**

26       **(c) A document is duly negotiated if it is negotiated in the manner stated in this sub-**  
 27 **section to a holder that purchases the document in good faith, without notice of any defense**  
 28 **against or claim to the document on the part of any person, and for value, unless it is es-**  
 29 **tablished that the negotiation is not in the regular course of business or financing or in-**  
 30 **volves taking delivery of the document in settlement or payment of a monetary obligation.**

31       *[(5)] (3) Indorsement of a nonnegotiable document of title* neither makes it negotiable nor adds  
 32 to the transferee's rights.

33       *[(6)] (4) The naming in a negotiable bill of lading* of a person to be notified of the arrival of the  
 34 goods does not limit the negotiability of the bill *[nor]* **or** constitute notice to a purchaser *[thereof]*  
 35 **of the bill** of any interest of *[such]* **that** person in the goods.

36       **SECTION 78.** ORS 77.5020 is amended to read:

37       77.5020. (1) Subject to ORS **77.2050 and** 77.5030 *[and to the provisions of ORS 77.2050 on fungible*  
 38 *goods]*, a holder to *[whom]* **which** a negotiable document of title has been duly negotiated acquires  
 39 thereby:

40       (a) Title to the document;

41       (b) Title to the goods;

42       (c) All rights accruing under the law of agency or estoppel, including rights to goods delivered  
 43 to the bailee after the document was issued; and

44       (d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the  
 45 document free of any defense or claim by the issuer except those arising under the terms of the

1 document or under this chapter[.], **but** in the case of a delivery order the bailee's obligation accrues  
 2 only upon **the bailee's acceptance of the delivery order** and the obligation acquired by the holder  
 3 is that the issuer and any indorser will procure the acceptance of the bailee.

4 (2) Subject to ORS 77.5030, title and rights *[so]* acquired **by due negotiation** are not defeated  
 5 by any stoppage of the goods represented by the document **of title** or by surrender of *[such]* **the**  
 6 goods by the bailee[,] and are not impaired even *[though]* **if**:

7 (a) The **due** negotiation or any prior **due** negotiation constituted a breach of duty; *[or]*

8 (b) *[even though]* Any person has been deprived of possession of *[the]* **a negotiable tangible**  
 9 document **or control of a negotiable electronic document** by misrepresentation, fraud, accident,  
 10 mistake, duress, loss, theft or conversion[.]; or

11 (c) *[even though]* A previous sale or other transfer of the goods or document has been made to  
 12 a third person.

13 **SECTION 79.** ORS 77.5030 is amended to read:

14 77.5030. (1) A document of title confers no right in goods against a person *[who]* **that** before  
 15 issuance of the document had a legal interest or a perfected security interest in *[them]* **the goods**  
 16 and *[who neither]* **that did not**:

17 (a) *[Delivered or entrusted them]* **Deliver or entrust the goods** or any document of title cover-  
 18 ing *[them]* **the goods** to the bailor or the **bailor's** nominee *[of the bailor]* with:

19 (A) Actual or apparent authority to ship, store or sell;

20 (B) *[or with]* Power to obtain delivery under ORS 77.4030; or

21 (C) *[with]* Power of disposition under ORS 72.4030, **72A.3040 (2), 72A.3050 (2)**, *[and]* 79.0320 or  
 22 **79.0321 (3)** or other statute or rule of law; *[nor]* or

23 (b) *[Acquiesced]* **Acquiesce** in the procurement by the bailor or *[the]* **its** nominee *[of the bailor]*  
 24 of any document *[of title]*.

25 (2) Title to goods based upon an unaccepted delivery order is subject to the rights of *[anyone]*  
 26 **any person** to *[whom]* **which** a negotiable warehouse receipt or bill of lading covering the goods  
 27 has been duly negotiated. *[Such a]* **That** title may be defeated under ORS 77.5040 to the same extent  
 28 as the rights of the issuer or a transferee from the issuer.

29 (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights  
 30 of *[anyone]* **any person** to *[whom]* **which** a bill issued by the freight forwarder is duly negotiated[;  
 31 *but*]. **However**, delivery by the carrier in accordance with ORS 77.4010 to 77.4040 pursuant to its  
 32 own bill of lading discharges the carrier's obligation to deliver.

33 **SECTION 80.** ORS 77.5040 is amended to read:

34 77.5040. (1) A transferee of a document **of title**, whether negotiable or nonnegotiable, to  
 35 *[whom]* **which** the document has been delivered but not duly negotiated, acquires the title and rights  
 36 *[which]* **that** the **document's** transferor had or had actual authority to convey.

37 (2) In the case of a **transfer of a nonnegotiable document of title**, until but not after the bailee  
 38 receives *[notification]* **notice** of the transfer, the rights of the transferee may be defeated:

39 (a) By those creditors of the transferor *[who]* **which** could treat the *[sale]* **transfer** as void un-  
 40 der ORS 72.4020 or **72A.3080**; *[or]*

41 (b) By a buyer from the transferor in ordinary course of business if the bailee has delivered the  
 42 goods to the buyer or received notification of the buyer's rights; *[or]*

43 (c) **By a lessee from the transferor in ordinary course of business if the bailee has de-**  
 44 **livered the goods to the lessee or received notification of the lessee's rights; or**

45 *[(c)]* (d) As against the bailee by good faith dealings of the bailee with the transferor.

1 (3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill  
 2 of lading which causes the bailee not to deliver **the goods** to the consignee defeats the consignee's  
 3 title to the goods if *[they]* **the goods** have been delivered to a buyer in ordinary course of business  
 4 **or lessee in ordinary course of business** and, in any event, defeats the consignee's rights against  
 5 the bailee.

6 (4) Delivery **of the goods** pursuant to a nonnegotiable document **of title** may be stopped by a  
 7 seller under ORS 72.7050[, *and*] **or a lessor under ORS 72A.5260** subject to the *[requirement]* **re-**  
 8 **quirements** of due notification *[there provided]* **in those sections**. A bailee *[honoring]* **that honors**  
 9 the seller's **or lessor's** instructions is entitled to be indemnified by the seller **or lessor** against any  
 10 resulting loss or expense.

11 **SECTION 81.** ORS 77.5050 is amended to read:

12 77.5050. The indorsement of a **tangible** document of title issued by a bailee does not make the  
 13 indorser liable for any default by the bailee or by previous indorsers.

14 **SECTION 82.** ORS 77.5060 is amended to read:

15 77.5060. The transferee of a negotiable **tangible** document of title has a specifically enforceable  
 16 right to have the **document's** transferor supply any necessary indorsement, but the transfer be-  
 17 comes a negotiation only as of the time the indorsement is supplied.

18 **SECTION 83.** ORS 77.5070 is amended to read:

19 77.5070. *[Where]* **If** a person negotiates or *[transfers]* **delivers** a document of title for value,  
 20 otherwise than as a mere intermediary under ORS 77.5080, *[then]* unless otherwise agreed, the *[per-*  
 21 *son warrants to the immediate purchaser only]* **transferor**, in addition to any warranty made in  
 22 selling **or leasing** the goods, **warrants to the immediate purchaser only that:**

23 (1) *[That]* The document is genuine; *[and]*

24 (2) *[That]* The *[person has no]* **transferor does not have** knowledge of any fact *[which]* **that**  
 25 would impair *[its]* **the document's** validity or worth; and

26 (3) *[That]* The negotiation or *[transfer]* **delivery** is rightful and fully effective with respect to the  
 27 title to the document and the goods it represents.

28 **SECTION 84.** ORS 77.5080 is amended to read:

29 77.5080. A collecting bank or other intermediary known to be entrusted with documents **of title**  
 30 on behalf of another or with collection of a draft or other claim against delivery of documents  
 31 warrants by *[such]* **the** delivery of the documents only its own good faith and authority. *This rule*  
 32 *applies even though the]* **even if the collecting bank or other** intermediary has purchased or made  
 33 advances against the claim or draft to be collected.

34 **SECTION 85.** ORS 77.5090 is amended to read:

35 77.5090. *[The question]* Whether a document **of title** is adequate to fulfill the obligations of a  
 36 contract for sale, **a contract for lease** or the conditions of a **letter of credit** is *[governed]* **deter-**  
 37 **mined** by ORS *[chapter 72 on sales and ORS chapter 75 on letters of credit]* **chapter 72, 72A or 75.**

38 **SECTION 86.** ORS 77.6010 is amended to read:

39 77.6010. (1) If a document *[has been]* **of title is** lost, stolen or destroyed, a court may order de-  
 40 livery of the goods or issuance of a substitute document and the bailee may without liability to any  
 41 person comply with *[such]* **the** order. If the document was negotiable, **a court may not order de-**  
 42 **livery of the goods or issuance of a substitute document without the claimant's posting se-**  
 43 **curity unless it finds that** *[the claimant must post security approved by the court to indemnify]* any  
 44 person *[who]* **that** may suffer loss as a result of nonsurrender **of possession or control** of the  
 45 document **is adequately protected against the loss**. If the document was *[not negotiable, such se-*

1 *curity may be required at the discretion of the court]* **nonnegotiable, the court may require secu-**  
 2 **urity.** The court may also [*in its discretion*] order payment of the bailee's reasonable costs and  
 3 [*counsel*] **attorney fees in any action under this subsection.**

4 (2) A bailee [*who*] **that** without a court order delivers goods to a person claiming under a  
 5 missing negotiable document **of title** is liable to any person injured thereby[, *and*]. If the delivery  
 6 is not in good faith, **the bailee is** [*becomes*] liable for conversion. Delivery in good faith is not  
 7 conversion [*if made in accordance with a filed classification or tariff or, where no classification or*  
 8 *tariff is filed,*] if the claimant posts security with the bailee in an amount at least double the value  
 9 of the goods at the time of posting to indemnify any person injured by the delivery [*who*] **which** files  
 10 a notice of claim within one year after the delivery.

11 **SECTION 87.** ORS 77.6020 is amended to read:

12 77.6020. [*Except where the*] **Unless a document of title** was originally issued upon delivery of  
 13 the goods by a person [*who had no*] **that did not have** power to dispose of them, [*no lien attaches*]  
 14 **a lien does not attach** by virtue of any judicial process to goods in the possession of a bailee for  
 15 which a negotiable document of title is outstanding unless **possession or control of** the document  
 16 [*be*] **is** first surrendered to the bailee or [*its*] **the document's** negotiation **is** enjoined[, *and*]. The  
 17 bailee [*shall*] **may** not be compelled to deliver the goods pursuant to process until **possession or**  
 18 **control of** the document is surrendered to the bailee or [*impounded by*] **to** the court. [*One who*  
 19 *purchases*] **A purchaser of** the document for value without notice of the process or injunction takes  
 20 free of the lien imposed by judicial process.

21 **SECTION 88.** ORS 77.6030 is amended to read:

22 77.6030. If more than one person claims title **to** or possession of the goods, the bailee is excused  
 23 from delivery until the bailee has [*had*] a reasonable time to ascertain the validity of the adverse  
 24 claims or to [*bring*] **commence** an action [*to compel all claimants to interplead and may compel*  
 25 *such*] **for** interpleader[.]. **The bailee may assert an interpleader** either in defending an action for  
 26 nondelivery of the goods[, ] or by original action[, *whichever is appropriate*].

27 **SECTION 89.** ORS 78.1020 is amended to read:

28 78.1020. (1) In this chapter:

29 (a) "Adverse claim" means a claim in which a claimant who has a property interest in a finan-  
 30 cial asset asserts that it is a violation of the rights of the claimant for another person to hold,  
 31 transfer or deal with the financial asset.

32 (b) "Bearer form," as applied to a certificated security, means a form in which the security is  
 33 payable to the bearer of the security certificate according to its terms but not by reason of an in-  
 34 dorsement.

35 (c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but  
 36 does not exclude a bank acting in that capacity.

37 (d) "Certificated security" means a security that is represented by a certificate.

38 (e) "Clearing corporation" means:

39 (A) A person that is registered as a clearing agency under the federal securities laws;

40 (B) A federal reserve bank; or

41 (C) Any other person that provides clearance or settlement services with respect to financial  
 42 assets that would require it to register as a clearing agency under the federal securities laws but  
 43 for an exclusion or exemption from the registration requirement, if its activities as a clearing cor-  
 44 poration, including promulgation of rules, are subject to regulation by a federal or state govern-  
 45 mental authority.

1 (f) “Communicate” means to:

2 (A) Send a signed writing; or

3 (B) Transmit information by any mechanism agreed upon by the persons transmitting and re-  
4 ceiving the information.

5 (g) “Entitlement holder” means a person identified in the records of a securities intermediary  
6 as the person having a security entitlement against the securities intermediary. If a person acquires  
7 a security entitlement by virtue of ORS 78.5010 (2)(b) or (c), that person is the entitlement holder.

8 (h) “Entitlement order” means a notification communicated to a securities intermediary direct-  
9 ing transfer or redemption of a financial asset to which the entitlement holder has a security  
10 entitlement.

11 (i)(A) “Financial asset,” except as otherwise provided in ORS 78.1030, means:

12 (i) A security;

13 (ii) An obligation of a person or a share, participation, or other interest in a person or in  
14 property or an enterprise of a person, that is, or is of a type, dealt in or traded on financial markets,  
15 or that is recognized in any area in which it is issued or dealt in as a medium for investment; or

16 (iii) Any property that is held by a securities intermediary for another person in a securities  
17 account if the securities intermediary has expressly agreed with the other person that the property  
18 is to be treated as a financial asset under this chapter.

19 (B) As context requires, “financial asset” means either the interest itself or the means by which  
20 a person’s claim to it is evidenced, including a certificated or uncertificated security, a security  
21 certificate or a security entitlement.

22 [(j) “Good faith,” for purposes of the obligation of good faith in the performance or enforcement of  
23 contracts or duties within this chapter, means honesty in fact and the observance of reasonable com-  
24 mercial standards of fair dealing.]

25 [(k)] (j) “Indorsement” means a signature that alone or accompanied by other words is made on  
26 a security certificate in registered form or on a separate document for the purpose of assigning,  
27 transferring or redeeming the security or granting the power to assign, transfer or redeem it.

28 [(L)] (k) “Instruction” means a notification communicated to the issuer of an uncertificated se-  
29 curity that directs that the transfer of the security be registered or that the security be redeemed.

30 [(m)] (L) “Registered form,” as applied to a certificated security, means a form in which:

31 (A) The security certificate specifies a person entitled to the security; and

32 (B) A transfer of the security may be registered upon books maintained for that purpose by or  
33 on behalf of the issuer, or the security certificate so states.

34 [(n)] (m) “Securities intermediary” means:

35 (A) A clearing corporation; or

36 (B) A person, including a bank or broker, that in the ordinary course of business maintains se-  
37 curities accounts for others and is acting in that capacity.

38 [(o)] (n) “Security,” except as otherwise provided in ORS 78.1030, means an obligation of an  
39 issuer or a share, participation or other interest in an issuer or in property or an enterprise of an  
40 issuer:

41 (A) That is represented by a security certificate in bearer or registered form, or the transfer  
42 of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

43 (B) That is one of a class or series or by its terms is divisible into a class or series of shares,  
44 participations, interests or obligations; and

45 (C)(i) That is, or is of a type, dealt in or traded on securities exchanges or securities markets;



1 or

2 (ii) That is a medium for investment and by its terms expressly provides that it is a security  
3 governed by this chapter.

4 [(p)] (o) “Security certificate” means a certificate representing a security.

5 [(q)] (p) “Security entitlement” means the rights and property interest of an entitlement holder  
6 with respect to a financial asset specified in ORS 78.5010 to 78.5110.

7 [(r)] (q) “Uncertificated security” means a security that is not represented by a certificate.

8 (2) Other definitions applying to this chapter and the sections in which they appear are:

9 (a) “Appropriate person” as defined in ORS 78.1070.

10 (b) “Control” as defined in ORS 78.1060.

11 (c) “Delivery” as defined in ORS 78.3010.

12 (d) “Investment company security” as defined in ORS 78.1030.

13 (e) “Issuer” as defined in ORS 78.2010.

14 (f) “Overissue” as defined in ORS 78.2100.

15 (g) “Protected purchaser” as defined in ORS 78.3030.

16 (h) “Securities account” as defined in ORS 78.5010.

17 (3) In addition, ORS chapter 71 contains general definitions and principles of construction and  
18 interpretation applicable throughout this chapter.

19 (4) The characterization of a person, business or transaction for purposes of this chapter does  
20 not determine the characterization of the person, business or transaction for purposes of any other  
21 law, regulation or rule.

22 **SECTION 90.** ORS 78.1030 is amended to read:

23 78.1030. (1) A share or similar equity interest issued by a corporation, business trust, joint stock  
24 company or similar entity is a security.

25 (2) An “investment company security” is a security. “Investment company security” means a  
26 share or similar equity interest issued by an entity that is registered as an investment company  
27 under the federal investment company laws, an interest in a unit investment trust that is so regis-  
28 tered or a face-amount certificate issued by a face-amount certificate company that is so registered.  
29 “Investment company security” does not include an insurance policy, endowment policy or annuity  
30 contract issued by an insurance company.

31 (3) An interest in a partnership or limited liability company is not a security unless it is dealt  
32 in or traded on securities exchanges or in securities markets, its terms expressly provide that it is  
33 a security governed by this chapter or it is an investment company security. However, an interest  
34 in a partnership or limited liability company is a financial asset if it is held in a securities account.

35 (4) A writing that is a security certificate is governed by this chapter and not by ORS chapter  
36 73, even though it also meets the requirements of that chapter. However, a negotiable instrument  
37 governed by ORS chapter 73 is a financial asset if it is held in a securities account.

38 (5) An option or similar obligation issued by a clearing corporation to its participants is not a  
39 security, but is a financial asset.

40 (6) A commodity contract, as defined in ORS 79.0102, is not a security or a financial asset.

41 **(7) A document of title is not a financial asset unless ORS 78.1020 (1)(i)(iii) applies.**

42 **SECTION 91.** ORS 79.0102 is amended to read:

43 79.0102. (1) As used in this chapter:

44 (a) “Accession” means goods that are physically united with other goods in such a manner that  
45 the identity of the original goods is not lost.

- 1 (b) “Account,” except as used in “account for[, ]”:
- 2 (A) Means a right to payment of a monetary obligation, whether or not earned by  
3 performance[,];
- 4 (i) For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed  
5 of[,];
- 6 (ii) For services rendered or to be rendered[,];
- 7 (iii) For a policy of insurance issued or to be issued[,];
- 8 (iv) For a secondary obligation incurred or to be incurred[,];
- 9 (v) For energy provided or to be provided[,];
- 10 (vi) For the use or hire of a vessel under a charter or other contract[,];
- 11 (vii) Arising out of the use of a credit or charge card or information contained on or for use  
12 with the card[,]; or
- 13 (viii) As winnings in a lottery or other game of chance operated or sponsored by a state, gov-  
14 ernmental unit of a state, or person licensed or authorized to operate the game by a state or gov-  
15 ernmental unit of a state. The term includes health-care-insurance receivables.
- 16 (B) [*The term*] Does not include:
- 17 (i) Rights to payment evidenced by chattel paper or an instrument[,];
- 18 (ii) Commercial tort claims[,];
- 19 (iii) Deposit accounts[,];
- 20 (iv) Investment property[,];
- 21 (v) Letter-of-credit rights or letters of credit[,]; or
- 22 (vi) Rights to payment for money or funds advanced or sold, other than rights arising out of the  
23 use of a credit or charge card or information contained on or for use with the card.
- 24 (c)(A) “Account debtor” means a person obligated on an account, chattel paper or general in-  
25 tangible.
- 26 (B) The term does not include persons obligated to pay a negotiable instrument, even if the in-  
27 strument constitutes part of chattel paper.
- 28 (d) “Accounting,” except as used in “accounting for,” means a record:
- 29 (A) Authenticated by a secured party;
- 30 (B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days  
31 earlier or 35 days later than the date of the record; and
- 32 (C) Identifying the components of the obligations in reasonable detail.
- 33 (e) “Agricultural lien” means an interest, other than a security interest or a lien created under  
34 ORS 87.226, 87.228, 87.700 to 87.736 or 87.750 to 87.777, in farm products:
- 35 (A) Which secures payment or performance of an obligation for:
- 36 (i) Goods or services furnished in connection with a debtor’s farming operation; or
- 37 (ii) Rent on real property leased by a debtor in connection with its farming operation;
- 38 (B) Which is created by statute in favor of a person that:
- 39 (i) In the ordinary course of its business furnished goods or services to a debtor in connection  
40 with a debtor’s farming operation; or
- 41 (ii) Leased real property to a debtor in connection with the debtor’s farming operation; and
- 42 (C) Whose effectiveness does not depend on the person’s possession of the personal property.
- 43 (f) “As-extracted collateral” means:
- 44 (A) Oil, gas or other minerals that are subject to a security interest that:
- 45 (i) Is created by a debtor having an interest in the minerals before extraction; and

- 1 (ii) Attaches to the minerals as extracted; or  
2 (B) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals  
3 in which the debtor had an interest before extraction.
- 4 (g) “Authenticate” means:  
5 (A) To sign; or  
6 (B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole  
7 or in part, with the present intent of the authenticating person to identify the person and adopt or  
8 accept a record.
- 9 (h) “Bank” means an organization that is engaged in the business of banking. The term includes  
10 savings banks, savings and loan associations, credit unions and trust companies.
- 11 (i) “Cash proceeds” means proceeds that are money, checks, deposit accounts or the like.
- 12 (j) “Certificate of title” means a certificate of title with respect to which a statute provides for  
13 the security interest in question to be indicated on the certificate as a condition or result of the  
14 security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.
- 15 (k)(A) “Chattel paper” means a record or records that evidence both a monetary obligation and  
16 a security interest in specific goods, a security interest in specific goods and software used in the  
17 goods, a security interest in specific goods and license of software used in the goods, a lease of  
18 specific goods, or a lease of specific goods and license of software used in the goods. In this para-  
19 graph, “monetary obligation” means a monetary obligation secured by the goods or owed under a  
20 lease of the goods and includes a monetary obligation with respect to software used in the goods.
- 21 (B) The term does not include:  
22 (i) Charters or other contracts involving the use or hire of a vessel; or  
23 (ii) Records that evidence a right to payment arising out of the use of a credit or charge card  
24 or information contained on or for use with the card. If a transaction is evidenced by records that  
25 include an instrument or series of instruments, the group of records taken together constitutes  
26 chattel paper.
- 27 (L) “Collateral” means the property subject to a security interest or agricultural lien. The term  
28 includes:  
29 (A) Proceeds to which a security interest attaches;  
30 (B) Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and  
31 (C) Goods that are the subject of a consignment.
- 32 (m) “Commercial tort claim” means a claim arising in tort with respect to which:  
33 (A) The claimant is an organization; or  
34 (B) The claimant is an individual and the claim:  
35 (i) Arose in the course of the claimant’s business or profession; and  
36 (ii) Does not include damages arising out of personal injury to or the death of an individual.
- 37 (n) “Commodity account” means an account maintained by a commodity intermediary in which  
38 a commodity contract is carried for a commodity customer.
- 39 (o) “Commodity contract” means a commodity futures contract, an option on a commodity fu-  
40 tures contract, a commodity option or another contract if the contract or option is:  
41 (A) Traded on or subject to the rules of a board of trade that has been designated as a contract  
42 market for such a contract pursuant to federal commodities laws; or  
43 (B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the  
44 books of a commodity intermediary for a commodity customer.
- 45 (p) “Commodity customer” means a person for which a commodity intermediary carries a com-

- 1 commodity contract on its books.
- 2 (q) “Commodity intermediary” means a person that:
- 3 (A) Is registered as a futures commission merchant under federal commodities law; or
- 4 (B) In the ordinary course of its business provides clearance or settlement services for a board
- 5 of trade that has been designated as a contract market pursuant to federal commodities law.
- 6 (r) “Communicate” means:
- 7 (A) To send a written or other tangible record;
- 8 (B) To transmit a record by any means agreed upon by the persons sending and receiving the
- 9 record; or
- 10 (C) In the case of transmission of a record to or by a filing office, to transmit a record by any
- 11 means prescribed by filing-office rule.
- 12 (s) “Consignee” means a merchant to which goods are delivered in a consignment.
- 13 (t) “Consignment” means a transaction, regardless of its form, in which a person delivers goods
- 14 to a merchant for the purpose of sale and:
- 15 (A) The merchant:
- 16 (i) Deals in goods of that kind under a name other than the name of the person making delivery;
- 17 (ii) Is not an auctioneer; and
- 18 (iii) Is not generally known by its creditors to be substantially engaged in selling the goods of
- 19 others;
- 20 (B) With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time
- 21 of delivery;
- 22 (C) The goods are not consumer goods immediately before delivery; and
- 23 (D) The transaction does not create a security interest that secures an obligation.
- 24 (u) “Consignor” means a person that delivers goods to a consignee in a consignment.
- 25 (v) “Consumer debtor” means a debtor in a consumer transaction.
- 26 (w) “Consumer goods” means goods that are used or bought for use primarily for personal,
- 27 family or household purposes.
- 28 (x) “Consumer-goods transaction” means a consumer transaction in which:
- 29 (A) An individual incurs an obligation primarily for personal, family or household purposes; and
- 30 (B) A security interest in consumer goods secures the obligation.
- 31 (y) “Consumer obligor” means an obligor who is an individual and who incurred the obligation
- 32 as part of a transaction entered into primarily for personal, family or household purposes.
- 33 (z)(A) “Consumer transaction” means a transaction in which:
- 34 (i) **An individual incurs an obligation primarily for personal, family or household**
- 35 **purposes[.];**
- 36 (ii) A security interest secures the obligation[.]; and
- 37 (iii) The collateral is held or acquired primarily for personal, family or household purposes.
- 38 (B) The term includes consumer-goods transactions.
- 39 (aa) “Continuation statement” means an amendment of a financing statement which:
- 40 (A) Identifies, by its file number, the initial financing statement to which it relates; and
- 41 (B) Indicates that it is a continuation statement for, or that it is filed to continue the effec-
- 42 tiveness of, the identified financing statement.
- 43 (bb) “Debtor” means:
- 44 (A) A person having an interest, other than a security interest or other lien, in the collateral,
- 45 whether or not the person is an obligor;

- 1 (B) A seller of accounts, chattel paper, payment intangibles or promissory notes; or  
 2 (C) A consignee.
- 3 (cc)(A) “Deposit account” means a demand, time, savings, passbook or similar account main-  
 4 tained with a bank.
- 5 (B) The term does not include investment property or accounts evidenced by an instrument.
- 6 (dd) “Document” means a document of title or a receipt of the type described in ORS 77.2010  
 7 (2).
- 8 (ee) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting  
 9 of information stored in an electronic medium.
- 10 (ff) “Encumbrance” means a right, other than an ownership interest, in real property. The term  
 11 includes mortgages and other liens on real property.
- 12 (gg) “Equipment” means goods other than inventory, farm products or consumer goods.
- 13 (hh) “Farm products” means goods, other than standing timber, with respect to which the debtor  
 14 is engaged in a farming operation and which are:
- 15 (A) Crops grown, growing, or to be grown, including:  
 16 (i) Crops produced on trees, vines and bushes; and  
 17 (ii) Aquatic goods produced in aquacultural operations;  
 18 (B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;  
 19 (C) Supplies used or produced in a farming operation; or  
 20 (D) Products of crops or livestock in their unmanufactured states.
- 21 (ii) “Farming operation” means raising, cultivating, propagating, fattening, grazing or any other  
 22 farming, livestock or aquacultural operation.
- 23 (jj) “File number” means the number assigned to an initial financing statement pursuant to ORS  
 24 79.0519 (1).
- 25 (kk) “Filing office” means an office designated in ORS 79.0501 as the place to file a financing  
 26 statement.
- 27 (LL) “Filing-office rule” means a rule adopted pursuant to ORS 79.0526.
- 28 (mm) “Financing statement” means a record or records composed of an initial financing state-  
 29 ment and any filed record relating to the initial financing statement.
- 30 (nn) “Fixture filing” means the filing of a financing statement covering goods that are or are to  
 31 become fixtures and satisfying ORS 79.0502 (1) and (2). The term includes the filing of a financing  
 32 statement covering goods of a transmitting utility which are or are to become fixtures.
- 33 (oo)(A) “Fixtures” means goods that have become so related to particular real property that an  
 34 interest in them arises under real property law.
- 35 (B) The term does not include portable irrigation equipment including movable pipe, pumps,  
 36 electrical pump panels, pump columns, electrical wire, wheel lines, center pivots and handlines.
- 37 (C) The term includes domestic pumps, domestic pump wire, domestic pump panels, domestic  
 38 pump columns[,] and buried irrigation equipment including buried pipe, buried electrical wire and  
 39 all buried well casings.
- 40 (pp) “General intangible” means any personal property, including things in action, other than  
 41 accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments,  
 42 investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals  
 43 before extraction. The term includes payment intangibles and software.
- 44 [(qq) “Good faith” means honesty in fact and the observance of reasonable commercial standards  
 45 of fair dealing.]

1        ~~[(rr)]~~ **(qq)(A)** “Goods” means all things that are movable when a security interest attaches.

2        **(B)** The term includes:

3        (i) Fixtures[.];

4        (ii) Standing timber that is to be cut and removed under a conveyance or contract for sale[.];

5        (iii) The unborn young of animals[.];

6        (iv) Crops grown, growing or to be grown, even if the crops are produced on trees, vines or  
7 bushes[.]; and

8        (v) Manufactured structures.

9        **(C)** The term also includes a computer program embedded in goods and any supporting infor-  
10 mation provided in connection with a transaction relating to the program if:

11        (i) The program is associated with the goods in such a manner that it customarily is considered  
12 part of the goods[.]; or

13        (ii) By becoming the owner of the goods, a person acquires a right to use the program in con-  
14 nection with the goods.

15        **(D)** The term does not include a computer program embedded in goods that consist solely of the  
16 medium in which the program is embedded. The term also does not include accounts, chattel paper,  
17 commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment  
18 property, letter-of-credit rights, letters of credit, money or oil, gas or other minerals before ex-  
19 traction.

20        ~~[(ss)]~~ **(rr)** “Governmental unit” means a subdivision, agency, department, county, parish,  
21 municipality or other unit of the government of the United States, a state or a foreign country. The  
22 term includes an organization having a separate corporate existence if the organization is eligible  
23 to issue debt on which interest is exempt from income taxation under the laws of the United States.

24        ~~[(tt)]~~ **(ss)** “Health-care-insurance receivable” means an interest in or claim under a policy of  
25 insurance which is a right to payment of a monetary obligation for health-care goods or services  
26 provided.

27        ~~[(uu)]~~ **(tt)(A)** “Instrument” means a negotiable instrument or any other writing that evidences  
28 a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is  
29 of a type that in ordinary course of business is transferred by delivery with any necessary indorse-  
30 ment or assignment.

31        **(B)** The term does not include:

32        (i) Investment property[.];

33        (ii) Letters of credit; or

34        (iii) Writings that evidence a right to payment arising out of the use of a credit or charge card  
35 or information contained on or for use with the card.

36        ~~[(vv)]~~ **(uu)** “Inventory” means goods, other than farm products, which:

37        (A) Are leased by a person as lessor;

38        (B) Are held by a person for sale or lease or to be furnished under a contract of service;

39        (C) Are furnished by a person under a contract of service; or

40        (D) Consist of raw materials, work in process, or materials used or consumed in a business.

41        ~~[(ww)]~~ **(vv)** “Investment property” means a security, whether certificated or uncertificated, se-  
42 curity entitlement, securities account, commodity contract or commodity account.

43        ~~[(xx)]~~ **(ww)** “Jurisdiction of organization,” with respect to a registered organization, means the  
44 jurisdiction under whose law the organization is organized.

45        ~~[(yy)]~~ **(xx)(A)** “Letter-of-credit right” means a right to payment or performance under a letter

1 of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment  
2 or performance.

3 **(B)** The term does not include the right of a beneficiary to demand payment or performance  
4 under a letter of credit.

5 [(zz)] **(yy)** “Lien creditor” means:

6 (A) A creditor that has acquired a lien on the property involved by attachment, levy or the like;

7 (B) An assignee for benefit of creditors from the time of assignment;

8 (C) A trustee in bankruptcy from the date of the filing of the petition; or

9 (D) A receiver in equity from the time of appointment.

10 [(aaa)] **(zz)** “Manufactured structure” has the meaning given that term in ORS 446.561.

11 [(bbb)] **(aaa)** “Manufactured-structure transaction” means a secured transaction:

12 (A) That creates a purchase-money security interest in a manufactured structure, other than a  
13 manufactured structure held as inventory; or

14 (B) In which a manufactured structure, other than a manufactured structure held as inventory,  
15 is the primary collateral.

16 [(ccc)] **(bbb)** “Mortgage” means a consensual interest in real property, including fixtures, which  
17 secures payment or performance of an obligation.

18 [(ddd)] **(ccc)** “New debtor” means a person that becomes bound as debtor under ORS 79.0203 (4)  
19 by a security agreement previously entered into by another person.

20 [(eee)] **(ddd)(A)** “New value” means:

21 (i) Money[,];

22 (ii) Money’s worth in property, services or new credit[,]; or

23 (iii) Release by a transferee of an interest in property previously transferred to the transferee.

24 **(B)** The term does not include an obligation substituted for another obligation.

25 [(fff)] **(eee)** “Noncash proceeds” means proceeds other than cash proceeds.

26 [(ggg)] **(fff)(A)** “Obligor” means a person that, with respect to an obligation secured by a secu-  
27 rity interest in or an agricultural lien on the collateral[,];

28 (i) Owes payment or other performance of the obligation[,];

29 (ii) Has provided property other than the collateral to secure payment or other performance of  
30 the obligation[,]; or

31 (iii) Is otherwise accountable in whole or in part for payment or other performance of the obli-  
32 gation.

33 **(B)** The term does not include issuers or nominated persons under a letter of credit.

34 [(hhh)] **(ggg)** “Original debtor,” except as used in ORS 79.0310 (3), means a person that, as  
35 debtor, entered into a security agreement to which a new debtor has become bound under ORS  
36 79.0203 (4).

37 [(iii)] **(hhh)** “Payment intangible” means a general intangible under which the account debtor’s  
38 principal obligation is a monetary obligation.

39 [(jjj)] **(iii)** “Person related to,” with respect to an individual, means:

40 (A) The spouse of the individual;

41 (B) A brother, brother-in-law, sister or sister-in-law of the individual;

42 (C) An ancestor or lineal descendant of the individual or the individual’s spouse; or

43 (D) Any other relative, by blood or marriage, of the individual or the individual’s spouse who  
44 shares the same home with the individual.

45 [(kkk)] **(jjj)** “Person related to,” with respect to an organization, means:

1 (A) A person directly or indirectly controlling, controlled by, or under common control with the  
2 organization;

3 (B) An officer or director of, or a person performing similar functions with respect to, the or-  
4 ganization;

5 (C) An officer or director of, or a person performing similar functions with respect to, a person  
6 described in subparagraph (A) of this paragraph;

7 (D) The spouse of an individual described in subparagraph (A), (B) or (C) of this paragraph; or

8 (E) An individual who is related by blood or marriage to an individual described in subpara-  
9 graph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual.

10 *[(LLL)] (kkk)* “Proceeds,” except as used in ORS 79.0609 (2), means the following property:

11 (A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collat-  
12 eral;

13 (B) Whatever is collected on, or distributed on account of, collateral;

14 (C) Rights arising out of collateral;

15 (D) To the extent of the value of collateral, claims arising out of the loss, nonconformity or in-  
16 terference with the use of, defects or infringement of rights in, or damage to, the collateral; or

17 (E) To the extent of the value of collateral and to the extent payable to the debtor or the se-  
18 cured party, insurance payable by reason of the loss or nonconformity of, defects or infringement  
19 of rights in, or damage to, the collateral.

20 *[(mmm)] (LLL)* “Promissory note” means an instrument that evidences a promise to pay a mon-  
21 etary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a  
22 bank that the bank has received for deposit a sum of money or funds.

23 *[(nnn)] (mmm)* “Proposal” means a record authenticated by a secured party which includes the  
24 terms on which the secured party is willing to accept collateral in full or partial satisfaction of the  
25 obligation it secures pursuant to ORS 79.0620, 79.0621 and 79.0622.

26 *[(ooo)] (nnn)* “Public-finance transaction” means a secured transaction in connection with  
27 which:

28 (A) Debt securities are issued;

29 (B) All or a portion of the securities issued have an initial stated maturity of at least 20 years;  
30 and

31 (C) The debtor, obligor, secured party, account debtor or other person obligated on collateral,  
32 assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state  
33 or a governmental unit of a state.

34 *[(ppp)] (ooo)* “Pursuant to commitment,” with respect to an advance made or other value given  
35 by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent  
36 event of default or other event not within the secured party’s control has relieved or may relieve  
37 the secured party from its obligation.

38 *[(qqq)] (ppp)* “Record,” except as used in “for record,” “of record,” “record or legal title” and  
39 “record owner,” means information that is inscribed on a tangible medium or which is stored in an  
40 electronic or other medium and is retrievable in perceivable form.

41 *[(rrr)] (qqq)* “Registered organization” means an organization organized solely under the law of  
42 a single state or the United States and as to which the state or the United States is required by  
43 statute or regulation to maintain a public record showing the organization to have been organized.

44 *[(sss)] (rrr)* “Secondary obligor” means an obligor to the extent that:

45 (A) The obligor’s obligation is secondary; or



1 (B) The obligor has a right of recourse with respect to an obligation secured by collateral  
2 against the debtor, another obligor, or property of either.

3 [(*ttt*)] (**sss**) “Secured party” means:

4 (A) A person in whose favor a security interest is created or provided for under a security  
5 agreement, whether or not any obligation to be secured is outstanding;

6 (B) A person that holds an agricultural lien;

7 (C) A consignor;

8 (D) A person to which accounts, chattel paper, payment intangibles or promissory notes have  
9 been sold;

10 (E) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor  
11 a security interest or agricultural lien is created or provided for; or

12 (F) A person that holds a security interest arising under ORS 72.4010, 72.5050, 72.7110 (3),  
13 72A.5080 (5), 74.2100 or 75.1180.

14 [(*uuu*)] (**ttt**) “Security agreement” means an agreement that creates or provides for a security  
15 interest.

16 [(*vvv*)] (**uuu**) “Send,” in connection with a record or notification, means:

17 (A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of  
18 communication, with postage or cost of transmission provided for, addressed to any address reason-  
19 able under the circumstances; or

20 (B) To cause the record or notification to be received within the time that it would have been  
21 received if properly sent under subparagraph (A) of this paragraph.

22 [(*www*)] (**vvv**)(A) “Software” means a computer program and any supporting information pro-  
23 vided in connection with a transaction relating to the program.

24 (B) The term does not include a computer program that is included in the definition of goods.

25 [(*xxx*)] (**www**) “State” means a state of the United States, the District of Columbia, Puerto Rico,  
26 the United States Virgin Islands or any territory or insular possession subject to the jurisdiction  
27 of the United States.

28 [(*yyy*)] (**xxx**) “Supporting obligation” means a letter-of-credit right or secondary obligation that  
29 supports the payment or performance of an account, chattel paper, a document, a general intangible,  
30 an instrument or investment property.

31 [(*zzz*)] (**yyy**) “Tangible chattel paper” means chattel paper evidenced by a record or records  
32 consisting of information that is inscribed on a tangible medium.

33 [(*aaa*)] (**zzz**) “Termination statement” means an amendment of a financing statement which:

34 (A) Identifies, by its file number, the initial financing statement to which it relates; and

35 (B) Indicates either that it is a termination statement or that the identified financing statement  
36 is no longer effective.

37 [(*bbb*)] (**aaa**) “Transmitting utility” means an organization primarily engaged in the business  
38 of:

39 (A) Operating a railroad, subway, street railway or trolley bus;

40 (B) Transmitting communications electrically, electromagnetically or by light;

41 (C) Transmitting goods by pipeline or sewer; or

42 (D) Transmitting or producing and transmitting electricity, steam, gas or water.

43 (2) “Control” as provided in section 54 of this 2009 Act and the following definitions in other  
44 sections apply to this chapter:

45 “Applicant”

ORS 75.1020

1	“Beneficiary”	ORS 75.1020
2	“Broker”	ORS 78.1020
3	“Certificated security”	ORS 78.1020
4	“Check”	ORS 73.0104
5	“Clearing corporation”	ORS 78.1020
6	“Contract for sale”	ORS 72.1060
7	“Customer”	ORS 74.1040
8	“Entitlement holder”	ORS 78.1020
9	“Financial asset”	ORS 78.1020
10	“Holder in due course”	ORS 73.0302
11	“Issuer” (with respect	
12	to a letter of credit or	
13	letter-of-credit right)	ORS 75.1020
14	“Issuer” (with respect	
15	to a security)	ORS 78.2010
16	<b>“Issuer” (with respect</b>	
17	<b>to documents of title)</b>	<b>ORS 77.1020</b>
18	“Lease”	ORS 72A.1030
19	“Lease agreement”	ORS 72A.1030
20	“Lease contract”	ORS 72A.1030
21	“Leasehold interest”	ORS 72A.1030
22	“Lessee”	ORS 72A.1030
23	“Lessee in ordinary course	
24	of business”	ORS 72A.1030
25	“Lessor”	ORS 72A.1030
26	“Lessor’s residual	
27	interest”	ORS 72A.1030
28	“Letter of credit”	ORS 75.1020
29	“Merchant”	ORS 72.1040
30	“Negotiable instrument”	ORS 73.0104
31	“Nominated person”	ORS 75.1020
32	“Note”	ORS 73.0104
33	“Proceeds of a letter	
34	of credit”	ORS 75.1140
35	“Prove”	ORS 73.0103
36	“Sale”	ORS 72.1060
37	“Securities account”	ORS 78.5010
38	“Securities intermediary”	ORS 78.1020
39	“Security”	ORS 78.1020
40	“Security certificate”	ORS 78.1020
41	“Security entitlement”	ORS 78.1020
42	“Uncertificated security”	ORS 78.1020

43 (3) ORS chapter 71 contains general definitions and principles of construction and interpretation  
 44 applicable throughout this chapter.

45 **SECTION 92.** ORS 79.0203 is amended to read:

1 79.0203. (1) A security interest attaches to collateral when it becomes enforceable against the  
2 debtor with respect to the collateral, unless an agreement expressly postpones the time of attach-  
3 ment.

4 (2) Except as otherwise provided in subsections (3) to (9) of this section, a security interest is  
5 enforceable against the debtor and third parties with respect to the collateral only if:

6 (a) Value has been given;

7 (b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a  
8 secured party; and

9 (c) One of the following conditions is met:

10 (A) The debtor has authenticated a security agreement that provides a description of the  
11 collateral and, if the security interest covers timber to be cut, a description of the land concerned;

12 (B) The collateral is not a certificated security and is in the possession of the secured party  
13 under ORS 79.0313 pursuant to the debtor's security agreement;

14 (C) The collateral is a certificated security in registered form and the security certificate has  
15 been delivered to the secured party under ORS 78.3010 pursuant to the debtor's security agreement;  
16 or

17 (D) The collateral is deposit accounts, electronic chattel paper, investment property, [or]  
18 letter-of-credit rights[,] **or electronic documents**, and the secured party has control under **section**  
19 **54 of this 2009 Act or** ORS 79.0104, 79.0105, 79.0106 or 79.0107 pursuant to the debtor's security  
20 agreement.

21 (3) Subsection (2) of this section is subject to ORS 74.2100 on the security interest of a collecting  
22 bank, ORS 75.1180 on the security interest of a letter-of-credit issuer or nominated person, ORS  
23 79.0110 on a security interest arising under ORS chapter 72 or 72A and ORS 79.0206 on security  
24 interests in investment property.

25 (4) A person becomes bound as debtor by a security agreement entered into by another person  
26 if, by operation of law other than this chapter or by contract:

27 (a) The security agreement becomes effective to create a security interest in the person's prop-  
28 erty; or

29 (b) The person becomes generally obligated for the obligations of the other person, including the  
30 obligation secured under the security agreement, and acquires or succeeds to all or substantially  
31 all of the assets of the other person.

32 (5) If a new debtor becomes bound as debtor by a security agreement entered into by another  
33 person:

34 (a) The agreement satisfies subsection (2)(c) of this section with respect to existing or after-  
35 acquired property of the new debtor to the extent the property is described in the agreement; and

36 (b) Another agreement is not necessary to make a security interest in the property enforceable.

37 (6) The attachment of a security interest in collateral gives the secured party the rights to  
38 proceeds provided by ORS 79.0315 and is also attachment of a security interest in a supporting ob-  
39 ligation for the collateral.

40 (7) The attachment of a security interest in a right to payment or performance secured by a  
41 security interest or other lien on personal or real property is also attachment of a security interest  
42 in the security interest, mortgage or other lien.

43 (8) The attachment of a security interest in a securities account is also attachment of a security  
44 interest in the security entitlements carried in the securities account.

45 (9) The attachment of a security interest in a commodity account is also attachment of a secu-

1 rity interest in the commodity contracts carried in the commodity account.

2 **SECTION 93.** ORS 79.0207 is amended to read:

3 79.0207. (1) Except as otherwise provided in subsection (4) of this section, a secured party shall  
4 use reasonable care in the custody and preservation of collateral in the secured party's possession.  
5 In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to  
6 preserve rights against prior parties unless otherwise agreed.

7 (2) Except as otherwise provided in subsection (4) of this section, if a secured party has pos-  
8 session of collateral:

9 (a) Reasonable expenses, including the cost of insurance and payment of taxes or other charges,  
10 incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor  
11 and are secured by the collateral;

12 (b) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any  
13 effective insurance coverage;

14 (c) The secured party shall keep the collateral identifiable, but fungible collateral may be  
15 commingled; and

16 (d) The secured party may use or operate the collateral:

17 (A) For the purpose of preserving the collateral or its value;

18 (B) As permitted by an order of a court having competent jurisdiction; or

19 (C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

20 (3) Except as otherwise provided in subsection (4) of this section, a secured party having pos-  
21 session of collateral or control of collateral under ORS 79.0104, 79.0105, 79.0106 or 79.0107 **or sec-**  
22 **tion 54 of this 2009 Act:**

23 (a) May hold as additional security any proceeds, except money or funds, received from the  
24 collateral;

25 (b) Shall apply money or funds received from the collateral to reduce the secured obligation,  
26 unless remitted to the debtor; and

27 (c) May create a security interest in the collateral.

28 (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles or promissory  
29 notes or a consignor:

30 (a) Subsection (1) of this section does not apply unless the secured party is entitled under an  
31 agreement:

32 (A) To charge back uncollected collateral; or

33 (B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the  
34 nonpayment or other default of an account debtor or other obligor on the collateral; and

35 (b) Subsections (2) and (3) of this section do not apply.

36 **SECTION 94.** ORS 79.0208 is amended to read:

37 79.0208. (1) This section applies to cases in which there is no outstanding secured obligation and  
38 the secured party is not committed to make advances, incur obligations or otherwise give value.

39 (2) Within 10 days after receiving an authenticated demand by the debtor:

40 (a) A secured party having control of a deposit account under ORS 79.0104 (1)(b) shall send to  
41 the bank with which the deposit account is maintained an authenticated statement that releases the  
42 bank from any further obligation to comply with instructions originated by the secured party;

43 (b) A secured party having control of a deposit account under ORS 79.0104 (1)(c) shall:

44 (A) Pay the debtor the balance on deposit in the deposit account; or

45 (B) Transfer the balance on deposit into a deposit account in the debtor's name;

1 (c) A secured party, other than a buyer, having control of electronic chattel paper under ORS  
2 79.0105 shall:

3 (A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its  
4 designated custodian;

5 (B) If the debtor designates a custodian that is the designated custodian with which the au-  
6 thoritative copy of the electronic chattel paper is maintained for the secured party, communicate  
7 to the custodian an authenticated record releasing the designated custodian from any further obli-  
8 gation to comply with instructions originated by the secured party and instructing the custodian to  
9 comply with instructions originated by the debtor; and

10 (C) Take appropriate action to enable the debtor or its designated custodian to make copies of  
11 or revisions to the authoritative copy which add or change an identified assignee of the authori-  
12 tative copy without the consent of the secured party;

13 (d) A secured party having control of investment property under ORS 78.1060 (4)(b) or 79.0106  
14 (2) shall send to the securities intermediary or commodity intermediary with which the security  
15 entitlement or commodity contract is maintained an authenticated record that releases the securities  
16 intermediary or commodity intermediary from any further obligation to comply with entitlement or-  
17 ders or directions originated by the secured party; *[and]*

18 (e) A secured party having control of a letter-of-credit right under ORS 79.0107 shall send to  
19 each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the  
20 secured party an authenticated release from any further obligation to pay or deliver proceeds of the  
21 letter of credit to the secured party<sup>1</sup>; **and**

22 **(f) A secured party having control of an electronic document shall:**

23 **(A) Give control of the electronic document to the debtor or a designated custodian;**

24 **(B) If the debtor designates a custodian that is the designated custodian with which the**  
25 **authoritative copy of the electronic document is maintained for the secured party, commu-**  
26 **nicate to the custodian an authenticated record releasing the designated custodian from any**  
27 **further obligation to comply with instructions originated by the secured party and instruct-**  
28 **ing the custodian to comply with instructions originated by the debtor; and**

29 **(C) Take appropriate action to enable the debtor or its designated custodian to make**  
30 **copies of or revisions to the authoritative copy that add or change an identified assignee of**  
31 **the authoritative copy without the consent of the secured party.**

32 **SECTION 95.** ORS 79.0301 is amended to read:

33 79.0301. Except as otherwise provided in ORS 79.0303 to 79.0306, the following rules determine  
34 the law governing perfection, the effect of perfection or nonperfection and the priority of a security  
35 interest in collateral:

36 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the  
37 local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the  
38 priority of a security interest in collateral.

39 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs per-  
40 fection, the effect of perfection or nonperfection, and the priority of a possessory security interest  
41 in that collateral.

42 (3) Except as otherwise provided in subsection (4) of this section, while **tangible** negotiable  
43 documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local  
44 law of that jurisdiction governs:

45 (a) Perfection of a security interest in the goods by filing a fixture filing;

1 (b) Perfection of a security interest in timber to be cut; and

2 (c) The effect of perfection or nonperfection and the priority of a nonpossessory security interest  
3 in the collateral.

4 (4) The local law of the jurisdiction in which the wellhead or minehead is located governs per-  
5 fection, the effect of perfection or nonperfection and the priority of a security interest in as-  
6 extracted collateral.

7 **SECTION 96.** ORS 79.0310 is amended to read:

8 79.0310. (1) Except as otherwise provided in subsection (2) of this section and ORS 79.0312 (2),  
9 a financing statement must be filed to perfect all security interests and agricultural liens.

10 (2) The filing of a financing statement is not necessary to perfect a security interest:

11 (a) That is perfected under ORS 79.0308 (4), (5), (6) or (7);

12 (b) That is perfected under ORS 79.0309 when it attaches;

13 (c) In property subject to a statute, regulation or treaty described in ORS 79.0311 (1);

14 (d) In goods in possession of a bailee that are perfected under ORS 79.0312 (4)(a) or (b);

15 (e) In certificated securities, documents, goods or instruments that are perfected without filing,  
16 **control** or possession under ORS 79.0312 (5), (6) or (7);

17 (f) In collateral in the secured party's possession under ORS 79.0313;

18 (g) In a certificated security which is perfected by delivery of the security certificate to the  
19 secured party under ORS 79.0313;

20 (h) In deposit accounts, electronic chattel paper, **electronic documents**, investment property  
21 or letter-of-credit rights that are perfected by control under ORS 79.0314;

22 (i) In proceeds that are perfected under ORS 79.0315; or

23 (j) That are perfected under ORS 79.0316.

24 (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this  
25 chapter is not required to continue the perfected status of the security interest against creditors  
26 of and transferees from the original debtor.

27 **SECTION 97.** ORS 79.0312 is amended to read:

28 79.0312. (1) A security interest in chattel paper, negotiable documents, instruments or invest-  
29 ment property may be perfected by filing. Except for goods in which filing is not necessary or ef-  
30 fective to perfect a security interest under this chapter, a security interest in goods may be  
31 perfected by filing.

32 (2) Except as otherwise provided in ORS 79.0315 (3) and (4) for proceeds:

33 (a) A security interest in a deposit account may be perfected only by control under ORS 79.0314;

34 (b) And except as otherwise provided in ORS 79.0308 (4), a security interest in a letter-of-credit  
35 right may be perfected only by control under ORS 79.0314; and

36 (c) A security interest in money may be perfected only by the secured party's taking possession  
37 under ORS 79.0313.

38 (3) While goods are in the possession of a bailee that has issued a negotiable document covering  
39 the goods:

40 (a) A security interest in the goods may be perfected by perfecting a security interest in the  
41 document; and

42 (b) A security interest perfected in the document has priority over any security interest that  
43 becomes perfected in the goods by another method during that time.

44 (4) While goods are in the possession of a bailee that has issued a nonnegotiable document  
45 covering the goods, a security interest in the goods may be perfected by:

- 1 (a) Issuance of a document in the name of the secured party;
- 2 (b) The bailee’s receipt of notification of the secured party’s interest; or
- 3 (c) Filing as to the goods.
- 4 (5) A security interest in certificated securities, negotiable documents or instruments is per-
- 5 fected without filing or the taking of possession **or control** for a period of 20 days from the time it
- 6 attaches to the extent that it arises for new value given under an authenticated security agreement.
- 7 (6) A perfected security interest in a negotiable document or goods in possession of a bailee,
- 8 other than one that has issued a negotiable document for the goods, remains perfected for 20 days
- 9 without filing if the secured party makes available to the debtor the goods or documents repre-
- 10 senting the goods for the purpose of:
  - 11 (a) Ultimate sale or exchange; or
  - 12 (b) Loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise
  - 13 dealing with them in a manner preliminary to their sale or exchange.
- 14 (7) A perfected security interest in a certificated security or instrument remains perfected for
- 15 20 days without filing if the secured party delivers the security certificate or instrument to the
- 16 debtor for the purpose of:
  - 17 (a) Ultimate sale or exchange; or
  - 18 (b) Presentation, collection, enforcement, renewal or registration of transfer.
- 19 (8) After the 20-day period specified in subsection (5), (6) or (7) of this section expires, perfection
- 20 depends upon compliance with this chapter.
- 21 **SECTION 98.** ORS 79.0313 is amended to read:
- 22 79.0313. (1) Except as otherwise provided in subsection (2) of this section, a secured party may
- 23 perfect a security interest in **tangible** negotiable documents, goods, instruments, money or tangible
- 24 chattel paper by taking possession of the collateral. A secured party may perfect a security interest
- 25 in certificated securities by taking delivery of the certificated securities under ORS 78.3010.
- 26 (2) With respect to goods that are covered by a certificate of title issued by this state or that
- 27 are manufactured structures, a secured party may perfect a security interest in the goods by taking
- 28 possession of the goods only in the circumstances described in ORS 79.0316 (5).
- 29 (3) With respect to collateral other than certificated securities and goods covered by a docu-
- 30 ment, a secured party takes possession of collateral in the possession of a person other than the
- 31 debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the
- 32 debtor’s business, when:
  - 33 (a) The person in possession authenticates a record acknowledging that it holds possession of
  - 34 the collateral for the secured party’s benefit; or
  - 35 (b) The person takes possession of the collateral after having authenticated a record acknowl-
  - 36 edging that it will hold possession of collateral for the secured party’s benefit.
- 37 (4) If perfection of a security interest depends upon possession of the collateral by a secured
- 38 party, perfection occurs no earlier than the time the secured party takes possession and continues
- 39 only while the secured party retains possession.
- 40 (5) A security interest in a certificated security in registered form is perfected by delivery when
- 41 delivery of the certificated security occurs under ORS 78.3010 and remains perfected by delivery
- 42 until the debtor obtains possession of the security certificate.
- 43 (6) A person in possession of collateral is not required to acknowledge that it holds possession
- 44 for a secured party’s benefit.
- 45 (7) If a person acknowledges that it holds possession for the secured party’s benefit:

1 (a) The acknowledgment is effective under subsection (3) of this section or ORS 78.3010 (1), even  
2 if the acknowledgment violates the rights of a debtor; and

3 (b) Unless the person otherwise agrees or law other than this chapter otherwise provides, the  
4 person does not owe any duty to the secured party and is not required to confirm the acknowledg-  
5 ment to another person.

6 (8) A secured party having possession of collateral does not relinquish possession by delivering  
7 the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the  
8 ordinary course of the debtor's business if the person was instructed before the delivery or is in-  
9 structed contemporaneously with the delivery:

10 (a) To hold possession of the collateral for the secured party's benefit; or

11 (b) To redeliver the collateral to the secured party.

12 (9) A secured party does not relinquish possession, even if a delivery under subsection (8) of this  
13 section violates the rights of a debtor. A person to which collateral is delivered under subsection  
14 (8) of this section does not owe any duty to the secured party and is not required to confirm the  
15 delivery to another person unless the person otherwise agrees or law other than this chapter oth-  
16 erwise provides.

17 **SECTION 99.** ORS 79.0314 is amended to read:

18 79.0314. (1) A security interest in investment property, deposit accounts, letter-of-credit rights,  
19 [or] electronic chattel paper **or electronic documents** may be perfected by control of the collateral  
20 under ORS 79.0104, 79.0105, 79.0106 or 79.0107 **or section 54 of this 2009 Act.**

21 (2) A security interest in deposit accounts, electronic chattel paper, [or] letter-of-credit rights  
22 **or electronic documents** is perfected by control under ORS 79.0104, 79.0105 or 79.0107 **or section**  
23 **55 of this 2009 Act** when the secured party obtains control and remains perfected by control only  
24 while the secured party retains control.

25 (3) A security interest in investment property is perfected by control under ORS 79.0106 from  
26 the time the secured party obtains control and remains perfected by control until:

27 (a) The secured party does not have control; and

28 (b) One of the following occurs:

29 (A) If the collateral is a certificated security, the debtor has or acquires possession of the se-  
30 curity certificate;

31 (B) If the collateral is an uncertificated security, the issuer has registered or registers the  
32 debtor as the registered owner; or

33 (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

34 **SECTION 100.** ORS 79.0317 is amended to read:

35 79.0317. (1) A security interest or agricultural lien is subordinate to the rights of:

36 (a) A person entitled to priority under ORS 79.0322; and

37 (b) Except as otherwise provided in subsection (5) of this section, a person that becomes a lien  
38 creditor before the earlier of the time:

39 (A) The security interest or agricultural lien is perfected; or

40 (B) One of the conditions specified in ORS 79.0203 (2)(c) is met and a financing statement cov-  
41 ering the collateral is filed.

42 (2) Except as otherwise provided in subsection (5) of this section, a buyer, other than a secured  
43 party, of tangible chattel paper, **tangible** documents, goods, instruments or a security certificate  
44 takes free of a security interest or agricultural lien if the buyer gives value and receives delivery  
45 of the collateral without knowledge of the security interest or agricultural lien and before it is



1 perfected.

2 (3) Except as otherwise provided in subsection (5) of this section, a lessee of goods takes free  
3 of a security interest or agricultural lien if the lessee gives value and receives delivery of the  
4 collateral without knowledge of the security interest or agricultural lien and before it is perfected.

5 (4) A licensee of a general intangible or a buyer, other than a secured party, of accounts, elec-  
6 tronic chattel paper, **electronic documents**, general intangibles or investment property other than  
7 a certificated security takes free of a security interest if the licensee or buyer gives value without  
8 knowledge of the security interest and before it is perfected.

9 (5) Except as otherwise provided in ORS 79.0320 and 79.0321, if a person files a financing  
10 statement with respect to a purchase-money security interest before or within 20 days after the  
11 debtor receives delivery of the collateral, the security interest takes priority over the rights of a  
12 buyer, lessee or lien creditor which arise between the time the security interest attaches and the  
13 time of filing.

14 **SECTION 101.** ORS 79.0338 is amended to read:

15 79.0338. Except for information on the jurisdiction of organization for an organization that is  
16 not a registered organization, if a security interest or agricultural lien is perfected by a filed fi-  
17 nancing statement providing information described in ORS 79.0516 (2)(e) which is incorrect at the  
18 time the financing statement is filed:

19 (1) The security interest or agricultural lien is subordinate to a conflicting perfected security  
20 interest in the collateral to the extent that the holder of the conflicting security interest gives value  
21 in reasonable reliance upon the incorrect information; and

22 (2) A purchaser, other than a secured party, of the collateral takes free of the security interest  
23 or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the  
24 purchaser gives value and, in the case of **tangible** chattel paper, **tangible** documents, goods, in-  
25 struments or a security certificate, receives delivery of the collateral.

26 **SECTION 102.** ORS 79.0601 is amended to read:

27 79.0601. (1) After default, a secured party has the rights provided in ORS 79.0601 to 79.0628 and,  
28 except as otherwise provided in ORS 79.0602, those provided by agreement of the parties. A secured  
29 party:

30 (a) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest  
31 or agricultural lien by any available judicial procedure; and

32 (b) If the collateral is documents, may proceed either as to the documents or as to the goods  
33 they cover.

34 (2) A secured party in possession of collateral or control of collateral under ORS 79.0104,  
35 79.0105, 79.0106 or 79.0107 **or section 54 of this 2009 Act** has the rights and duties provided in ORS  
36 79.0207.

37 (3) The rights under subsections (1) and (2) of this section are cumulative and may be exercised  
38 simultaneously.

39 (4) Except as otherwise provided in subsection (7) of this section and ORS 79.0605, after default,  
40 a debtor and an obligor have the rights provided in ORS 79.0601 to 79.0628 and by agreement of the  
41 parties.

42 (5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made  
43 upon the collateral by virtue of an execution based upon the judgment relates back to the earliest  
44 of:

45 (a) The date of perfection of the security interest or agricultural lien in the collateral;

1 (b) The date of filing a financing statement covering the collateral; or

2 (c) Any date specified in a statute under which the agricultural lien was created.

3 (6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien  
4 by judicial procedure within the meaning of this section. A secured party may purchase at the sale  
5 and thereafter hold the collateral free of any other requirements of this chapter.

6 (7) Except as otherwise provided in ORS 79.0607 (3), ORS 79.0601 to 79.0628 impose no duties  
7 upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangi-  
8 bles or promissory notes.

9 **SECTION 103.** ORS 84.007 is amended to read:

10 84.007. (1) Except as otherwise provided in subsection (2) of this section, ORS 84.001 to 84.061  
11 apply to electronic records and electronic signatures relating to a transaction.

12 (2) ORS 84.001 to 84.061 do not apply to a transaction to the extent it is governed by:

13 (a) A law governing the creation and execution of wills, codicils or testamentary trusts; or

14 (b) The Uniform Commercial Code other than [*ORS 71.1070 and 71.2060 and*] ORS chapters 72  
15 and 72A.

16 (3) ORS 84.001 to 84.061 apply to an electronic record or electronic signature otherwise excluded  
17 from the application of ORS 84.001 to 84.061 under subsection (2) of this section to the extent it is  
18 governed by a law other than those specified in subsection (2) of this section.

19 (4) A transaction subject to ORS 84.001 to 84.061 is also subject to other applicable substantive  
20 law.

21 **SECTION 104.** ORS 87.142 is amended to read:

22 87.142. As used in ORS 87.142 to 87.490 and 87.910, unless the context otherwise requires:

23 (1) “Animal” means any mammal, bird, fish, reptile, amphibian or insect.

24 (2) “Chattel” includes movable objects that are capable of [*ownership*] **being owned**, but does  
25 not include personal rights not reduced to possession but recoverable by an action at law or suit  
26 in equity, money, evidence of debt and negotiable instruments.

27 (3) “Electric cooperative” means a cooperative corporation organized under ORS chapter 62 the  
28 principal business of which is the construction, maintenance and operation of an electric trans-  
29 mission and distribution system for the benefit of the members of that cooperative corporation and  
30 which has no other principal business or purpose.

31 (4) “Electric utility” means a corporation engaged in distributing electricity, directly or indi-  
32 rectly, to or for the public and regulated by the Public Utility Commission under ORS chapter 757.

33 (5) “Excavation” means a shaft, tunnel, incline, adit, drift or other excavation designed for the  
34 use, working or draining of a mine.

35 (6) “Fair market value” means, with respect to a chattel sold at a foreclosure sale under ORS  
36 [*9.370, 87.142 to 87.490, 87.910 and 90.120*] **chapter 87**, the price of chattels of the same kind and  
37 condition prevailing in the county of sale at the time of sale.

38 (7) “Fungible chattels” means chattels of which any unit is the equivalent of any other unit.

39 (8) “Improvement” means a road, tramway, trail, flume, ditch, pipeline, building, structure,  
40 superstructure or boardinghouse used for or in connection with the working or development of a  
41 mine.

42 (9) “Irrigation” includes the use of canals, ditches, pipes, pumps, spraying apparatus and other  
43 mechanical devices to water land artificially.

44 (10) “Mine” means a mine, lode, mining claim or deposit that contains or may contain coal,  
45 metal or mineral of any kind.

1 (11) "Mortgagee" means a person who has a valid subsisting mortgage of record or trust deed  
2 of record securing a loan upon any real property to be charged with a lien under ORS 87.352 to  
3 87.362.

4 (12) "Nursery stock" means fruit trees, fruit-tree stock, nut trees, grapevines, fruit bushes, rose  
5 bushes, rose stock, forest and ornamental trees, and shrubs both deciduous and evergreen, florists'  
6 stock and cuttings, scions and seedlings of fruit or ornamental trees and shrubs, and all other  
7 fruit-bearing plants and parts thereof and plant products for propagation or planting.

8 (13) "Owner" includes:

9 (a) A person who has title to a chattel or real property;

10 (b) A person who is in possession of a chattel or real property under an agreement for the  
11 purchase thereof, whether the title thereto is in the person or the vendor of the person; or

12 (c) A person who is in lawful possession of a chattel or real property.

13 (14) "Person" includes individuals, corporations, associations, firms, partnerships and joint stock  
14 companies.

15 (15) "Security interest" means an interest in a chattel reserved or created by an agreement that  
16 secures payment or performance of an obligation as more particularly defined by ORS [71.2010  
17 (37)] **71.2010 (2)(ii)**.

18 (16) "Timbers" means sawlogs, spars, piles, felled logs and other wood growth that has been cut  
19 or separated from land.

20 (17) "Wood products" includes lumber, slabwood, plywood and other wood products produced  
21 from timbers. The term does not include paper or products made from paper.

22 **SECTION 105.** ORS 87.700 is amended to read:

23 87.700. As used in ORS 87.228 and 87.700 to 87.736, unless the context otherwise requires:

24 (1) "Agricultural produce" means horticultural products, viticultural products, fruit, berries,  
25 vegetables, hops, mint oil, hazelnuts or other nuts, dairy products, bee products, vermiculture pro-  
26 ducts, hay or straw baled and prepared for market, meat animals and Christmas trees as defined in  
27 ORS 571.505.

28 (2) "Agricultural producer" means a person that engages in or has engaged in the business of  
29 growing or producing agricultural produce for market or for delivery or transfer to others owning  
30 or holding title to the produce. "Agricultural producer" includes a landowner, producer, landlord,  
31 tenant, sharecropper or other person who participates in the growing of agricultural produce and  
32 receives a share of the produce.

33 (3) "Meat animal" has the meaning for that term provided in ORS 603.010.

34 (4) "Person" means individual, corporation, partnership, association, joint stock company, trust,  
35 limited liability company, limited liability partnership, cooperative, government entity,  
36 unincorporated organization or other business entity.

37 (5) "Purchaser" does not include a cooperative organized and operating under ORS chapter 62,  
38 including a foreign cooperative authorized to do business in this state under ORS chapter 60, if the  
39 agricultural producer is a member of the cooperative.

40 (6) "Security interest" has the meaning given that term in ORS [71.2010 (37)] **71.2010 (2)(ii)**.

41 **SECTION 106.** ORS 646A.030 is amended to read:

42 646A.030. As used in ORS 646A.030 to 646A.042, unless the context requires otherwise:

43 (1) "Business day" means any day except a Sunday or a legal holiday.

44 (2) "Buyer" means a person who purchases health spa services.

45 (3) "Conspicuous" has the meaning given that term in ORS [71.2010 (10)] **71.2010 (2)(j)**.

1 (4) "Health spa" means any person engaged, as a primary purpose, in the sale of instruction,  
 2 training, assistance or use of facilities that are purported to assist patrons in physical exercise,  
 3 weight control or figure development. The term also includes any person engaged primarily in the  
 4 sale of the right or privilege to use tanning booths, exercise equipment or facilities, such as a sauna,  
 5 whirlpool bath, weight-lifting room, massage, steam room, or other exercising machine or device.  
 6 "Health spa" does not include any facility owned and operated by the State of Oregon or any of its  
 7 political subdivisions.

8 (5) "Health spa services" means services, privileges or rights offered for sale by a health spa.

9 (6) "Person" has the meaning given that term in ORS 646.605 (4).

10 **SECTION 107.** ORS 650.210 is amended to read:

11 650.210. Without limiting the other provisions of ORS 650.200 to 650.250, the following specific  
 12 rights and prohibitions shall govern the relationship between the franchisor and the franchisee. It  
 13 shall be unlawful and a violation of ORS 650.200 to 650.250 for any franchisor to:

14 (1) Require a franchisee to purchase or lease goods or services of a franchisor or from approved  
 15 sources of supply unless and to the extent that the franchisor satisfies the burden of proving that  
 16 such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on  
 17 business grounds, and do not substantially affect competition. This subsection does not apply to the  
 18 initial inventory of the franchise. A determination of whether such restrictive purchasing agree-  
 19 ments are reasonably necessary for a lawful purpose justified on business grounds and do not sub-  
 20 stantially affect competition shall be guided by the decisions of the courts of the United States in  
 21 interpreting and applying the antitrust laws of the United States.

22 (2) Sell, rent or offer to sell or rent to a franchisee any product, service or property at a price  
 23 not set in good faith as defined in ORS [72.1030 (1)(b)] **71.2010 (2)(t)**.

24 (3) Require a franchisee to assent to a release, assignment, novation or waiver which would  
 25 relieve any person from liability imposed by ORS 650.200 to 650.250.

26 (4) Refuse to renew a franchise without fairly compensating the franchisee for the fair market  
 27 value at the time of expiration of the franchise of the franchisee's resalable inventory, supplies,  
 28 equipment and furnishings purchased from the franchisor, not including personalized materials that  
 29 have no value to the franchisor and inventory, supplies, equipment and furnishings not reasonably  
 30 required in the conduct of the franchise business. A franchisor may offset against amounts owed to  
 31 a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

32 (5) Impose on a franchisee by contract, rule or regulation, whether written or oral, any standard  
 33 of conduct unless the person so doing can sustain the burden of proving the standard of conduct to  
 34 be reasonable.

35 **SECTION 108.** ORS 777.770 is amended to read:

36 777.770. For the purpose of carrying into effect all or any of its powers, an export trading cor-  
 37 poration may:

38 (1) Borrow money, evidence such borrowing with its promissory notes or other obligations of  
 39 indebtedness, and pledge in whole or in part any of its assets or revenues not subject to prior liens  
 40 or pledges.

41 (2) Issue and sell revenue bonds in the manner and upon the terms and conditions authorized  
 42 by ORS 777.560 to 777.590.

43 (3) Purchase, negotiate and sell letters of credit, bills of lading, dock receipts, dock warrants,  
 44 drafts and other documents of title as defined in ORS [71.2010 (15)] **71.2010 (2)(p)**.

45 **SECTION 109.** ORS 801.465 is amended to read:

1 801.465. "Security interest" means an interest in a vehicle reserved or created by agreement and  
2 which secures payment or performance of an obligation as more particularly defined by ORS [71.2010  
3 (37)] **71.2010 (2)(ii)**.

4 **SECTION 110.** ORS 830.700 is amended to read:

5 830.700. As used in ORS 830.060 to 830.145, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780,  
6 830.785, 830.795 to 830.820 and 830.830 to 830.870, unless the context requires otherwise:

7 (1) "Boat" means every description of watercraft used or capable of being used as a means of  
8 transportation on the water, but does not include aircraft equipped to land on water, boathouses,  
9 floating homes, air mattresses, beach and water toys or single inner tubes.

10 (2) "Boathouse" means a covered structure on floats or piles used for the protected moorage of  
11 boats.

12 (3) "Dealer" means a person who engages wholly or in part in the business of buying, selling  
13 or exchanging boats, floating homes or boathouses, either outright or on conditional sale, bailment  
14 lease, chattel mortgage or otherwise.

15 (4) "Floating home" means a moored structure that is secured to a pier or pilings and is used  
16 primarily as a domicile and not as a boat.

17 (5) "Operate" means to navigate or otherwise use a boat on water.

18 (6) "Owner" means a person or persons who have a property interest other than a security in-  
19 terest in a boat, floating home or boathouse and the right of use or possession of the boat, floating  
20 house or boathouse, but does not include a lessee.

21 (7) "Ownership" means a property interest other than a security interest.

22 (8) "Security interest" means an interest reserved or created by agreement which secures pay-  
23 ment or performance of an obligation as more particularly defined by ORS [71.2010 (37)] **71.2010**  
24 **(2)(ii)**.

25 (9) "State of principal use" means the state on whose waters a boat is used or to be used during  
26 most of a calendar year.

27 **SECTION 111.** ORS 87.685 is amended to read:

28 87.685. As used in ORS 87.685 to 87.693, unless the context requires otherwise:

29 (1) "Default" means the failure to perform in a timely manner any obligation or duty set forth  
30 in the rental agreement.

31 (2) "Last known address" means the address provided by the occupant in the latest rental  
32 agreement or the address provided by the occupant in a subsequent written notice of a change of  
33 address.

34 (3) "Occupant" means a person or a sublessee, successor or assignee of the person who is enti-  
35 tled, under a rental agreement, to the exclusive use of specified storage space at a self-service  
36 storage facility.

37 (4) "Owner" means the owner, operator, lessor or sublessor of a self-service storage facility or  
38 an agent or any other person authorized by the owner, operator, lessor or sublessor to manage the  
39 facility or to receive rent from an occupant under a rental agreement.

40 (5) "Personal property" means movable property not affixed to land and includes, but is not  
41 limited to, goods, merchandise, household items and watercraft.

42 (6) "Rental agreement" means any written agreement or lease that establishes or modifies the  
43 terms, conditions, rules or any other provisions concerning the use and occupancy of a self-service  
44 storage facility.

45 (7) "Self-service storage facility" means any real property designed and used for the purpose of

1 renting or leasing individual storage space to occupants who are to have access to the storage space  
 2 for the purpose of storing and removing personal property. The term does not include a warehouse  
 3 or other facility used for storage of personal property and at which a warehouse receipt, bill of  
 4 lading or other document of title covering the personal property is issued under ORS chapter 77 by  
 5 the *[warehouseman or other]* person operating the facility. The term “self-service storage facility”  
 6 does not include real property used for residential purposes.

7 **SECTION 112.** ORS 586.400 is amended to read:

8 586.400. (1) Except as otherwise provided in subsection (2) of this section, the duty of a  
 9 *[warehouseman]* **warehouse** receiving grain for storage or shipment in a public warehouse operated  
 10 by the *[warehouseman]* **warehouse** shall be governed by the provisions of ORS 77.4030.

11 (2) A *[warehouseman’s]* **warehouse’s** duty to deliver grain is fulfilled if delivery is made to the  
 12 several owners in the order of demand as rapidly as it can be done by ordinary diligence; where  
 13 delivery is made within 48 hours after facilities for receiving the grain are provided, such delivery  
 14 is deemed to comply with this subsection.

15 (3) No *[warehouseman]* **warehouse** shall fail to deliver grain as provided in this section.

16 (4) In addition to being subject to penalties under ORS 586.990 for violation of subsection (3)  
 17 of this section, if a *[warehouseman]* **warehouse** fails to deliver grain as provided in this section, the  
 18 person entitled to delivery of the grain may maintain an action against the *[warehouseman]* **ware-**  
 19 **house** for any damages resulting from the *[warehouseman’s]* **warehouse’s** failure to deliver. In any  
 20 such action the person entitled to delivery of the grain has the option to seek recovery of actual  
 21 damages or of liquidated damages of one cent per bushel for each day’s delay.

22 **SECTION 113.** ORS 586.561 is amended to read:

23 586.561. (1) Any person operating a public warehouse who desires to discontinue the operation  
 24 shall at least 30 days prior to the date of expiration or closing date notify, by certified or registered  
 25 mail, at the last-known address all holders of warehouse receipts, all persons storing grain in such  
 26 warehouse and the department of the intention to discontinue the public warehouse business.

27 (2) If the address of any holder of a warehouse receipt or persons storing grain is unknown, then  
 28 the person operating a public warehouse shall also give notice of the intention to discontinue the  
 29 operation of a public warehouse by publication in some newspaper of general circulation in the  
 30 county once a week for two consecutive weeks. The date of the second published notice shall be at  
 31 least 30 days prior to the date of expiration of the operations.

32 (3) It shall be the duty of owners of such grain to remove, or cause to be removed, their grain  
 33 from such warehouse before the expiration date.

34 (4) If the *[warehouseman]* **warehouse** has not notified all persons or holders of warehouse re-  
 35 cepts as provided in subsection (1) of this section or published a notice as provided by subsection  
 36 (2) of this section, and if at the expiration date of the operations of the *[warehouseman]* **warehouse**  
 37 there are outstanding warehouse receipts covering grain in storage in the warehouse, or in the  
 38 opinion of the department there is reasonable evidence of outstanding liability by the  
 39 *[warehouseman]* **warehouse** under ORS chapter 77 or this chapter, then:

40 (a) The *[warehouseman]* **warehouse** is required to apply for, obtain and maintain a bond as  
 41 provided for in ORS 586.300 until such date that the State Department of Agriculture determines  
 42 all grain has been removed from the warehouse or the rights or claims of all holders of warehouse  
 43 receipts have been protected and satisfied.

44 (b) The department may invoke and is authorized to use the procedures and authority as pro-  
 45 vided for in ORS 586.525. The department is authorized to carry out and the *[warehouseman]*

1 **warehouse** is subject to the provisions of ORS 586.525 regardless of the fact that the license of the  
2 [*warehouseman*] **warehouse** may have expired.

3 **SECTION 114.** ORS 586.720 is amended to read:

4 586.720. (1) Except as provided in subsection (2) of this section, every public warehouse [*and*  
5 *warehouseman*] complying with the provisions of ORS 586.210 to 586.730 is exempt from all the pro-  
6 visions of all other laws of this state regulating and licensing warehouses [*and warehousemen*].

7 (2) The provisions of ORS chapter 77 apply to public warehouses [*and warehousemen*] complying  
8 with the provisions of ORS 586.210 to 586.730 to the extent that the provisions of ORS chapter 77  
9 are not inconsistent with the provisions of ORS 586.210 to 586.730.

10 **SECTION 115.** (1) **The amendments to ORS 71.2010, 72.1030, 72.1040, 72.3100, 72.3230,**  
11 **72.4010, 72.5030, 72.5050, 72.5060, 72.5090, 72.6050, 72.7050, 72A.1030, 72A.5140, 72A.5260, 74.1040,**  
12 **74.2100, 77.1020, 77.1030, 77.1040, 77.1050, 77.2010, 77.2020, 77.2030, 77.2040, 77.2050, 77.2060,**  
13 **77.2070, 77.2080, 77.2090, 77.2100, 77.3010, 77.3020, 77.3030, 77.3040, 77.3050, 77.3070, 77.3080,**  
14 **77.3090, 77.4010, 77.4020, 77.4030, 77.4040, 77.5010, 77.5020, 77.5030, 77.5040, 77.5050, 77.5060,**  
15 **77.5070, 77.5080, 77.5090, 77.6010, 77.6020, 77.6030, 78.1030, 79.0102, 79.0203, 79.0207, 79.0208,**  
16 **79.0301, 79.0310, 79.0312, 79.0313, 79.0314, 79.0317, 79.0338 and 79.0601 by sections 8, 24, 25, 27,**  
17 **28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 41, 45, 46, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64,**  
18 **65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91, 92,**  
19 **93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 of this 2009 Act apply only to a document of title that**  
20 **is issued or a bailment that arises on or after the effective date of this 2009 Act and do not**  
21 **apply to a right of action that has accrued before the effective date of this 2009 Act.**

22 (2) The amendments to ORS 71.2020, 71.2030, 71.2040, 71.2050 and 71.2060 by sections 9, 10,  
23 11, 12 and 13 of this 2009 Act apply on and after the effective date of this 2009 Act to trans-  
24 actions that are subject to the Uniform Commercial Code as enacted before the effective date  
25 of this 2009 Act.

26 (3) Sections 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of this 2009 Act apply on and after the  
27 effective date of this 2009 Act to transactions that are subject to the Uniform Commercial  
28 Code as enacted before the effective date of this 2009 Act.

29 **SECTION 116.** ORS 71.1090, 71.2070, 71.2080, 72.2080, 72A.2070 and 77.6040 are repealed.

30